United States Court of Appeals

for the Second Circuit

APPENDIX

Original with affidavit of mailing.

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74-2682

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-2682

LAWRENCE D'ALLESANDRO,
Petitioner-Appellee,

—against—

UNITED STATES OF AMERICA,
Respondent-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOINT APPENDIX

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.

UNITED STATES COURT OF APPEALS
FILED
FEB 7 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	PAGE
Docket Sheets of 72 Cr. 970	A-1
Superseding Indictment	A-7
District Court Order of April 10, 1973, Denying D'Allesandro's Motion for Reduction of Sentence	A-13
Docket Sheets of 74 C 1033	A-15
Transcript of October 30, 1972, *United States* v. *Lawrence D'Allesandro, Jr., et al.,* 72 Cr. 970	A-17
District Court Order of July 10, 1974, Treating D'Allesandro's Attached July 3, 1974 Letter as a Motion Pursuant to Title 28, U.S.C. § 2255	A-61
Letter From Lawrence D'Allesandro, Dated July 3, 1974	A-63
Enclosure to letter of Lawrence D'Allesandro dated July 3, 1974	A-65
Letter of United States of America of October 8, 1974 Replying to D'Allesandro's Motion and Order of District Court Endorsed Thereon Requiring a Hearing on the Motion	A-74
Letter of Legal Services Organization of Yale Law School to the District Court Dated November 6, 1974 and District Court Order of November 11, 1974 (Later Cancelled) Endorsed Thereon	A-76
Transcript of November 12, 1974, *Lawrence D'Allesandro* v. *United States,* 74 C 1033	A-79
Letter of United States of America of December 11, 1974 and Attached Affidavit of Michael Miele Official Court Reporter	A-107
Affidavit of Michael Miele	A-108

DOCKET SHEET OF 72 CR 970

A 1

D. C. Form No. 100

CRIMINAL DOCKET 72CR 970 CLOSED

WEINSTEIN, J.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	
JOSEPH FUCELLO, LAWRENCE D'ALLESANDRO, JR., JAMES TORTURO, GARY MANFRE, JOHN DeFLORIES and LUCY D'ALLESANDRO	
	For Defendant:

Did distribute heroin, etc.

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED				
			DATE	NAME	RECEIVED		DISBURSED
Fine, Lawrence D'Allesandro	10,000	00					
Clerk,							
Marshal,							
Attorney,							
Commissioner's Court,							
Witnesses,							

DATE	PROCEEDINGS
-16-72	Before BARTELS J -/SUPERSEDING Indictment filed
0-72	Govts Notice of Readiness for Trial filed.
9/5/72	Before Weinstein,J.-Case called-Govt's motion for protective order granted-Order to be submitted.
-6-72	Letter from Asst US Atty Behar of 8--23-72 filed (received from Chambers of Judge Weinstein setting case down for Sept. 1, 1972 for pleading.
9-7-72	By WEINSTEIN J - Order filed that the Clerk of the Court seal and preserve the following: 1. The affidavit for Search Warrant entitled U.S.A. against Safety Deposit Box No. 50, Bankers Federal Savings & Loan Assn., Brooklyn, N.Y. dated 6-6-72; (2) tape recordings and transcript thereof, marked Ct.Ex.#2, submitted to the C lerk along with this Order (3) Application & Affidavit in

DATE	PROCEEDINGS
	support of Order dated Aug. 22, 1972 marked as Ct.Ex.#1, etc.(See Order)
8-72	Before WEINSTEIN J - Case called - All defts present with the exception of deft MANFRE - Bench Warrant Ordered - All defts arraigned except deft MANFRE and each enter pleas of not guilty - Pre Trial Conference held and ~~mat~~ concluded - Affidavit to be unsealed Oct. 17, 1972 - Trial set for Oct. 24, 1972 at 10:00 am.
8-72	Bench warrant issued.
1-72	Letter of 9-19-72 filed from Legal Aid Society re deft FUCCILLO. (for relief from representing deft)
1-72	By Weinstein J - Order filed granting above motion (see Order on front of letter from Legal Aid of 9-19-72)
12-72	Before WEINSTEIN, J. - Case called. - Defts FUCILLO & counsel of the Legal Aid Society, and deft DeFLORIES & counsel John Corbett present. - Deft DeFLO withdraws his plea of not guilty and having been advised of his rights by the court and on his own behalf enters a plea of guilty to count 3. Bail continued. Sentence adjourned without date. - Case as to deft FUCILLO adjourned to 10-16-72 at 9:30 A.M. for disposition.
16-72	Before WEINSTEIN, J. - Case called. Deft FUCILLO & counsel Sonershein present. Deft withdraws his plea of not guilty and having been advised of his rights by the court and on his own behalf enters a plea of guilty to count 1. Sentence adjourned without date. Own recognizance continues.
18-72	Two stenographer's transcripts filed dated October 12 & 16, 1972.
-18-72	Before WEINSTEIN J - Case called - Defts not present - counsel James La Rossa present - Pre Trial Conference held and concluded - defts motion to examine tapes is granted. So Ordered.
-18-72	Petition for Wtit of Habeas Corpus Ad Testificandum filed. (Manfre)
-18-72	By WEINSTEIN J - Writ Issued, ret. Oct. 19, 1972 (Manfre)
19-72	Writ returned & filed/executed (GARY MANFRE).
20-72	Petition for Writ of Habeas Corpus Ad Testificandum filed (Deborah Salve
20-72	By COSTANTINO J - Writ Issued ret. Oct. 24, 1972 (Salvesen)
-24-72	Notice of Motion filed ret. Oct.27, 1972, for suppressing all evidence, order to make available the entire psychiatric history of deft John De Flories, severing counts 4, 5 & 6 as to defts Lawrence and Lucy D'Alessandro, etc.
-24-72	Before Weinstein J - Case called - trial adjd to Oct. 31, 1972.
-26-72	Writ retd and filed - Executed (Salvesen)
-27-72	Before WEINSTEIN, J. - Case called. D'Alessandro & deft Turturo & counsels present. Motion to suppress argued. Granted and denied as indicated.

-continued-

CR-970
RIMINAL DOCKET

A 3

ATE	PROCEEDINGS
	Defts motion for severance is denied. So Ordered.
7-72	Affidavit in opposition to defts' motions filed.
0-72	Before WEINSTEIN, J. - Case called. Defts LAWRENCE D'ALLESANDRO, JR,
	JAMES TORTURO and LUCY D'ALLESANDRO & counsels present. Defts' motion
	to suppress is denied. Defts LAWRENCE D'ALLESANDRO, JR and JAMES TORTURO
	withdraw their pleas of not guilty and having been advised of their
	rights by the court individually and on their own behalf enter pleas of
	guilty to count 2. Sentences set for Dec. 1, 1972 at 10:30 A.M. Case
	as to deft LUCY D'ALLESANDRO to be dismissed at the time of sentence.
	Govt's motion to remand defts D'ALLESANDRO, JR and TORTURO is denied.
-9-72	Stenographer's transcript filed dated 10-30-72.
8-72	Before WEINSTEIN J - Case called - Deft MANFRE enters a plea of
	guilty to count (4) motion to quash warrant of 7-31-72 is granted -
	motion that deft be held as material witness at $50,000 bail granted. (entry made 11-14-72)
0-72	Before WEINSTEIN J - Case called - sentence of deft MANFRE set for
	12-1-72 (later adjd by Clerk to 12-4-72 at 9:30 am.(this entry made
	11-14-72)
-20-72	Writ returned and filed - Executed ~~DWx~~ as to Witness Deborah Salvesen.
/1/72	Before WEINSTEIN, J._-Case called-Deft JAMES FRANK TORTURO
	AND Counsel R. Fischettti present-Deft sentenced to imprisonment
	for a period of 4 years on ct. 2 and a 3 year special parole
	term- On motion of Asst. U.S. Atty Behar cts. 1,3, and 4 dis-
	missed-Stay of execution of sentence granted to 12/15/72 at
	10:00 A.M.- deft LAWRENCE D'ALLESANDRO, JR. and counsel James
	La Rossa present-Deft sentenced to imprisonment for a period
	of 4 years and fined $10,000 and a 3 year special parole term
	on ct. 2- On motion of Asst. U.S. Atty Behar cts 1,3,4, and 5
	are dismissed.- On motion of Asst. U.S. Atty Behar cts 4, 6,7
	are dismissed as to LUCY D' ALLESANDRO.
/1/72	Judgment and Commitment filed (for deft JOHN TORTURO). Certified
/1/72	copies sent to Marshall.
/1/72	Judgment and Commitment filed (for deft LAWRENCE D'ALLESANDRO).
	Certified copies sent to Marshall.
/1/72	By WEINSTEIN, J.- Order of Dismissal filed. (for deft LUCY
	ALLESANDRO)
/4/72	Before WEINSTEIN, J.- Case called- deft JOHN DE FLORIES and
	counsel present-Deft sentenced to imprisonment for a period of
	of 4 yrs. on ct 3 pursuant to title 18Sec.3651- Deft to serve

D. C. 109

ATE	PROCEEDINGS A 4
	time already served in custody and the execution of the remainder of
	sentence is suspended and the deft is placed on probation for the remaind
	of sentence plus 3 years special parole term to run concurrent with probat
	commencing today-Special conditions of probation 1-deft to use no drugs
	except for medication prescribed by a doctor 2- deft to find a job- 3-
	On motion of AUSA Behar ct 4 is dismissed.
4/72	Before WEINSTEIN, J.- Case called-deft GARY MANFRE and counsel present
	Deft sentenced to 4 yrs. imprisonment pursuant to title 18 Sect. 3651
	on ct 4-Deft to serve time already served in custody-Execution of the
	balance of sentence is suspended and the deft is placed on probation for
	the remainder of sentence-On motion of AUSA Behar ct 2 is dismissed-
	Special conditions of probation-1-no drugs,2-to work reg., 3-Drug pro-
	grams to be arranged by probation- On motion of AUSA Behar the indictmen
	is dismissed as to deft FUCCILLO.
4/72	By WEINSTEIN, J.- Order of Dismissal filed. (for deft JOSEPH FUCILLO)
1/72	Judgment and Commitment filed (for deft GARY MANFRE) Copy sent to Marsha
4/72	Judgment and Commitment filed (for deft JOHN DE FLORIES) Copy sent to Mar
$?&3	Order releasing bail ,(By WEINSTEIN, J.) Filed.
5/72	Certified copy of Judgment and Commitment ret. and filed (for deft
	LAWRENCE D'ALLESANDRO, JR.)-Deft delivered to Fed. Det. Hdqs.
5/72	~~Deft delivered to Fed. Det. Hdqs.~~
-13-72	Voucher for compensation of counsel filed (DE FLORES)
-15-72	By WEINSTEIN, J. - Copy of order releasing bail filed (TURTURRO).
/20/72	Certified copy of Judgment and Commitment ret. and filed. (deft JOHN TORTURO)
	Deft delivered to Fed. Det. Hdqs.
/27/73	Voucher for Compensation filed (ATTY. LEONE)
9-73	Notice of Motion filed for reduction of sentence imposed (ret.4-9-73)
	as to defts. TURTURO & DAWRENCE D/ALLESSANDRO
5/73	Affidavit in Opposition to deft's motion filed.
6/73	Before ~~XXX~~WEINSTEIN, J.- Case called- Motion submitted- Motion denied-
	Memo to follow (DEFTS TURTURO and L. D'ALLESANDRO)
/10/73	By WEINSTEIN, J.- Memorandum and Order filed, that defts D'ALLESANDRO
	and TURTURO 's motion for reduction of sentence is denied.
/1/73	Letter dated 4/18/73 from deft Tutoro filed re: motion to withdraw pleas
/1/73	By WEINSTEIN, J.- Memo and Order filed that the clerk should send copies o
	the letter of deft Tutoro dated 4/18/73 to the U.S. Atty. and Mr. LaRossa.
/16/73	By WEINSTEIN,J.- Bench warrant ordered/issued (MANFRE)

2 CR 970
CRIMINAL DOCKET

DATE	PROCEEDINGS A 5
/29/73	Bench warrant retd and filed- Executed(DEFT MANFRE)
/1/73	Memorandum and Order filed that a hearing shall be held to determine whether the defendant is guilty of a violation of probation. etc. The report of Probation Violation is made part of this order(copies sent to counsel and the U.S. Attorney as ordered) (MANFRE)
-5-73	Before WEINSTEIN J - Case called - deft MANFRE & counsel John Leone present - hearing on violation of probation ordered - deft enters a plea of guilty to the charge after being advised of his rights - court found the deft guilty of violation of probation - deft sentenced to 4 years probation to begin today.
11-5-73	Amended Judgment and Order of Probation filed - certified copies to Probation (MANFRE)
-15-74	Letter dated Jan. 9, 1974 filed from deft Lawrence D'Alessandro received from Chambers (re fine imposed on deft etc)
-15-74	By WEINSTEIN J - Order filed (dated Jan. 14, 1974) on 2nd page of letter - fine was not intended to be a "stand committed" fine. Clerk to inform attys and deft.
20-74	Letter from deft D'Alesandro dated 2-12-74 to chambers and reply of Jdge Weinstein re:deft's sentence
/12/74	Before WEINSTEIN,J.-Case called- Deft LAWRENCE D'ALLESANDRO present wit counsel James La Rossa- Deft's motion to set aside his plea of guilty is granted(see 74 C 1033)- Deft withdraws his plea of not guilty and having been advised of his rights by the court and on his own behalf enters enters a plea of guilty to count 2- Deft sentenced to imprisonment for a period of 4 years pursuant to T-18, U.S.C. Sec. 3651- deft to serve 6 months with credit for time already served- execution of remainder of the sentence is suspended and the deft is placed on probation for a period of 3 years and 6 months and a special parole term of 3 years- deft's motion to dismiss counts 1,3,4 and 5 is granted- Govt's motion to stay the Courts order is granted to November 20, 1974 Deft to be released on November 20, 1974- Special condition of probation is that the deft doesn't use any drugs at any time except by prescription for medical reasons- and to get a job as soon as possible (LAWRENCE D'ALLESANDRO JR.)
1/12/74	Judgment and Commitment filed- certified copies to Marshal
-18-74	Certified copy of Judgment &U Commitment retd and filed - deft D'ALLESANDRO Jr. delivered to Federal Det. Headquarters.

D. C. 109

DATE	PROCEEDINGS
11-74	Letter of Dec. 11, 1974 and affidavit of Michael Miele filed (Forwarded to Chambers)re deft D'Allessandro,Jr.
-75	Stenographers transcript filed dated Dec. 1, 1972.

[illegible]
F.#723833

SUPERSEDING INDICTMENT

A 7

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

JOSEPH FUCILLO, LAWRENCE D'ALLESANDRO, JR., JAMES TORTURO, GARY MANFRE, JOHN DeFLORIES and LUCY D'ALLESANDRO,

Defendants.

SUPERSEDING INDICTMENT

Cr. No. _____
(T.18, U.S.C., §2, §1623; T.21, U.S.C., §841(a)(1), §846)

- - - - - - - - - - - - - - - - - - X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 25th day of January 1972, within the Eastern District of New York, the defendant JOSEPH FUCILLO and the defendant LAWRENCE D'ALLESANDRO, JR., and the defendant JAMES TORTURO did knowingly and intentionally distribute approximately one ounce of heroin, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, §841(a)(1); Title 18, United States Code, §2).

COUNT TWO

On or about the 16th day of February 1972, within the Eastern District of New York, the defendant GARY MANFRE and the defendant LAWRENCE D'ALLESANDRO, JR., and the defendant JAMES TORTURO did knowingly and intentionally distribute approximately one ounce of heroin, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, §841(a)(1); Title 18, United States Code, §2).

COUNT THREE

On or about the 20th day of April 1972, within the Eastern District of New York, the defendant JOHN DeFLORIES and the defendant LAWRENCE D'ALLESANDRO, JR., and the defendant JAMES TORTURO, did knowingly and intentionally distribute approximately 2.3 grams of heroin, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, §841(a)(1); Title 18, United States Code, §2).

ONLY COPY AVAILABLE

COUNT FOUR

On or about and between the 23rd day of January 1972, and the 28th day of June 1972, both dates being approximate and inclusive, within the Eastern District of New York, the defendant LAWRENCE D'ALLESANDRO, JR., and the defendant JAMES TORTURO, and the defendant JOSEPH FUCILLO, and the defendant GARY MANFRE, and the defendant JOHN DeFLORIES, and the defendant LUCY D'ALLESANDRO and others to the Grand Jury unknown, did knowingly and wilfully conspire to commit an offense against the United States, to wit: the unlawful, intentional and knowing distribution of heroin, a Schedule I narcotic drug controlled substance in violation of 841(a)(1), Title 21, United States Code.

In furtherance of the aforesaid unlawful conspiracy and for the purpose of effecting the objectives thereof, the following overt acts, were committed:

OVERT ACTS

1. On or about January 25, 1972, the defendant JOSEPH FUCILLO delivered a package to a person in Brooklyn, New York, within the Eastern District of New York.

2. On or about February 16, 1972, the defendant GARY MANFRE delivered a package to a person in Brooklyn, New York, within the Eastern District of New York.

3. On or about April 20, 1972, the defendant JOHN DeFLORIES delivered a package to a person in Brooklyn, New York, within the Eastern District of New York.

(Title 21, United States Code, §846).

COUNT FIVE

1. On or about June 7, 1972, within the Eastern District of New York, the defendant LAWRENCE D'ALLESANDRO, JR., having duly taken an oath that he would testify truly before a competent tribunal in a case in which a law of the United States authorizes an oath to be administered, to wit, a Federal Grand Jury of the United States, duly impaneled and sworn by the United States District Court for the Eastern District of New York, and then and there inquiring for that District into violations of Federal

low, unlawfully, wilfully and knowingly, and contrary to said oath, did state material matters which he did not believe to be true, as is more fully set forth hereinafter.

2. At the time and place aforesaid, the Grand Jury inquiring as aforesaid, was conducting an investigation into possible violations of Title 21, United States Code, §841, (distribution of narcotic drugs) and Title 21, United States Code, §846, (conspiracy to distribute narcotic drugs) for the purpose of determining whether any persons violated such statutes.

3. It was material to the investigation described in paragraph 2 hereof that the Grand Jury ascertain when and how narcotic drugs are being distributed in the Eastern District of New York, the source from which the drug supply is obtained, and the manner and means by which monies derived from the distribution of said drugs are secreted and or disposed of, and the use of interstate telephone facilities to promote said unlawful activity.

4. At the time hereinafter set forth and place aforesaid, LAWRENCE D'ALESSANDRO, JR., the defendant, duly appearing as a witness before the said Grand Jury and then and there being under oath as aforesaid, unlawfully, wilfully and knowingly and contrary to said oath, did testify falsely before said Grand Jury with respect to the aforesaid material matter, as follows:

Q. Now, have you ever given your mother money to put in the vault or the safe deposit box?

A. No.

Q. Are you sure of that?

A. Yes.

Q. At no time have you ever given your mother any cash to put in the safe deposit box?

A. Just in my bank account.

* * *

Q. Since January 1, 1972, have you personally given your mother any currency or cash to put in the vault or the safe deposit box?

A. No.

Q. Have you given your mother anything in the way of envelopes or any type of item to place in that box since January 1, 1972?

A. No.

* * *

5. The aforesaid testimony of LAWRENCE D'ALLESANDRO, JR., the defendant, as set forth herein, as he then and there well knew, was untrue. (Title 18, United States Code, §1623).

COUNT SIX

1. On or about June 7, 1972, within the Eastern District of New York, the defendant LUCY D'ALLESANDRO having duly taken an oath that she would testify truly before a competent tribunal in a case in which a law of the United States authorizes an oath to be administrated, to wit, a Federal Grand Jury of the United States, duly impaneled and sworn by the United States District Court for the Eastern District of New York, and then and there inquiring for that District into violations of Federal Law, unlawfully, wilfully and knowingly, and contrary to said oath, did state material matters which she did not believe to be true, as is more fully set forth hereinafter.

2. At the time and place aforesaid, the Grand Jury, inquiring as aforesaid, was conducting an investigation into possible violations of Title 21, United States Code, §841, (distribution of narcotic drugs) and Title 21, United States Code, §846, (conspiracy to distribute narcotic drugs) for the purpose of determining whether any persons violated such statutes.

3. It was material to the investigation described in paragraph 2 hereof that the Grand Jury ascertain when and how narcotic drugs are being distributed in the Eastern District of New York, the source from which the drug supply is obtained, and the manner and means by which monies derived from the distribution of said drugs are secreted and/or disposed of, and the use of interstate telephone facilities to promote said unlawful activity.

4. At the time hereinafter set forth and place aforesaid, LUCY D'ALLESANDRO the defendant, duly appearing as a witness before

the said Grand Jury and then and there being under oath as aforesaid, unlawfully, wilfully and knowingly, and contrary to said oath, did testify falsely before said Grand Jury with respect to the aforesaid material matters, as follows:

Q. Have you ever made any deposits of cash, say in the last year to any of these accounts or to that box, any large amounts deposited?

A. Not me.

* * *

Q. Now, in the vault or the safe deposit box, do you keep any funds or any money for anybody else? Any other reason like set aside in separate envelopes or anything like that?

A. No.

Q. Thats the safe deposit box I am talking about.

A. No.

* * *

COUNT SEVEN

1. On or about June 7, 1972, within the Eastern District of New York, the defendant LUCY D'ALLESANDRO having duly taken an oath that she would testify truly before a competent tribunal in a case in which a law of the United States authorizes an oath to be administrated, to wit, a Federal Grand Jury of the United States, duly impaneled and sworn by the United States District Court for the Eastern District of New York, and then and there inquiring for that District into violations of Federal Law, unlawfully, wilfully and knowingly, and contrary to said oath, did state material matters which she did not believe to be true, as is more fully set forth hereinafter.

2. At the time and place aforesaid the Grand Jury, inquiring as aforesaid, was conducting an investigation into possible violations of Title 21, United States Code, §841 (distribution of narcotics drugs) and Title 21, United States Code, §846, (Conspiracy to distribute narcotic drugs) for the purpose of determining whether any persons violated such statutes.

3. It was material to the investigation described in paragraph 2 hereof that the Grand Jury ascertain when and how narcotic drugs are being distributed in the Eastern District of New York, the source from which the drug supply is obtained, and the manner and means by which monies derived from the distribution of said drugs are secreted and/or disposed of, and the use of interstate telephone facilities to promote said unlawful activity.

4. At the time hereinafter set forth and place aforesaid, LUCY D'ALLESANDRO the defendant, duly appearing as a witness before the said Grand Jury and then and there being under oath as aforesaid, unlawfully, wilfully and knowingly, and contrary to said oath, did testify falsely before said Grand Jury with respect to the aforesaid material matters, as follows:

Q. Does Larry use your phone a lot?

A. Well I imagine normal. I don't know. I don't watch him when he uses it.

Q. How many extensions do you have on your phone in the house?

A. Two.

Q. Is there one in his room?

A. No.

Q. Where are the extensions located?

A. I have one in the kitchen and I have one down in the recreation room.

* * *

5. The aforesaid testimony of LUCY D'ALLESANDRO, the defendant, as set forth herein, as she then and there well knew was untrue. (Title 18, United States Code, §1623).

A TRUE BILL.

Gerard B. Laughran
FOREMAN.

Robert A Morse Jr. FJS
UNITED STATES ATTORNEY

ONLY COPY AVAILABLE

DISTRICT COURT ORDER OF APRIL 10, 1973, DENYING D'ALLESANDRO'S MOTION FOR REDUCTION OF SENTENCE

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
APR 10 1973
TIME A.M. P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -X

UNITED STATES OF AMERICA, :

-against- :

LAWRENCE D'ALESSANDRO :

- - - - - - - - - - - - - - - - - - - -X

Memorandum and Order

72-CR-970

M'FILMED

A P P E A R A N C E S:

Honorable Robert A. Morse, United States
Attorney for the Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201
Stephen Behar, Esq.
Assistant United States Attorney
Of Counsel

James LaRossa, Esq.
522 Fifth Avenue
New York, New York
10036

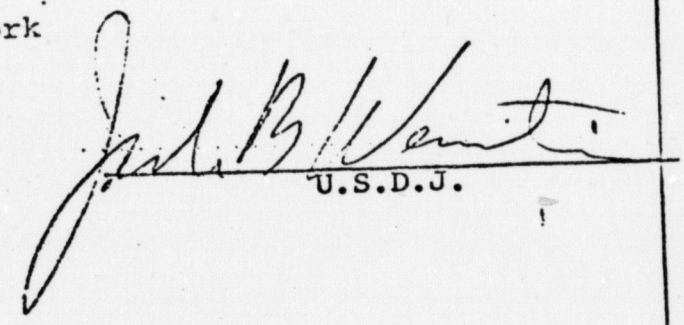
WEINSTEIN, D.J.

Defendant submits a motion for reduction of sentence. The court has carefully reconsidered the matter and finds no sufficient reason to modify the sentence.

The Clerk of the Court will send a copy of this memorandum and order to counsel and defendant.

So ordered.

Dated: Brooklyn, New York
April 10, 1973



U.S.D.J.

DOCKET SHEET OF 74 C 1033

A 15

74C 1033 DOCKET SEC. 2255 CLOSED WEINSTEIN, J.

TITLE OF CASE	ATTORNEYS
LAWRENCE D'ALESSANDRO	*For Plaintiff:* Pro Se
-against-	Lawrence D'Allesandro
UNITED STATES OF AMERICA	Pembroke Station
	Danbury, Conn. 06810
	For Defendant:

IS OF ACTION: PURSUANT TO SEC. 2255
(related case 72CR-970)

Y TRIAL CLAIMED

TE	PLAINTIFF'S ACCOUNT	RECEIVED	DISBURSED	DATE	DEFENDANT'S ACCOUNT	RECEIVED	DISBURSED
6-74	MOTION TO SEEK POST-CONVICTION RELIEF, ETC.	no fee					

ABSTRACT OF COSTS		RECEIPTS, REMARKS, ETC.
TO WHOM DUE	AMOUNT	

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
5-74	By WEINSTEIN, J. - Memorandum and order dtd 7-10-74 directing Clerk to treat papers as an action to set aside a conviction and that Clerk serve copy of papers upon the U.S. Attorney, the attorney for the defendant in the criminal action, and a copy of the memorandum and order upon the petitioner filed. (copies forwarded as directed)	1
5-74	Motion filed pursuant to Sec. 2255	2
9-74	Letter of David G. Trager, U.S. Atty., E.D.N.Y., filed dated Oct. 3 & 4 8, 1974, together with Memo. from WEINSTEIN, J. addressed to Clerk of Court, etc. (BY WEINSTEIN, J. Order filed dated October 9, 1974 endorsed upon the second page of letter of October 8, 1974. "There will have to be a hearing to consider the defendant's claims and the Government's contention that the record must be corrected. The Clerk shall inform the Government, the defendant and Mr. LaRossa. The Government shall arrange a prompt hearing at which witnesses will be required. SO ORDERED. (See Order)	
3-74	Letter of petitioner herein filed dated Oct. 16, 1974 addressed to WEINSTEIN, J.	5
4-74	PETITION FILED OF STEPHEN BEHAR, Assistant U.S.Atty., E.D.N.Y., etc.	6
4-74	Writ issued (returnable Nov. 12,1974 at 9:30 A.M.)	
12-74	Before WEINSTEIN, J. Case called. Defendant present, etc. MOTION TO SET ASIDE PLEA OF GUILTY - GRANTED, ETC. Government's motion to stay the court's order is granted to Nov. 20, 1974. Defendant to be released Nov. 20, 1974., etc. (See 72-CR-970 for further entries, etc.)	
12-74	Letter of Dennis E. Curtis, Director of Clinical Studies filed dated Nov. 6, 1974, together with order by WEINSTEIN, J., endorsed thereon, dated Nov. 11, 1974, etc. Re: examination of Probation Report; Clerk shall notify parties, etc. SO ORDERED.	7
13-74	Letter of Clerk of Court filed dated Nov.13,1974 addressed to petitioner hrein re enclosure of a copy of order of WEINSTEIN, J., etc., cc: U.S.Atty.,E.D.N.Y., Richard H. Heilbron, Jr., Dennis E. Curtis	8
13-74	Minutes of stenographer filed dated Nov. 12, 1974.	9
13-74	WRIT RETURNED AND FILED.	10
11-74	NOTICE OF APPEAL FILED (U.S.A.) with proof of service, etc.	11
12-74	Copy of Notice of Appeal was on this day mailed to Clerk, U.S.	

TRANSCRIPT OF OCTOBER 30, 1972, UNITED STATES v. LAWRENCE D'ALLESANDRO, JR., et al., 72 CR 970

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- :

LAWRENCE D'ALLESANDRO, JR., JAMES TORTURO and LUCY D'ALLESANDRO, : 72-CR-970

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

October 30, 1972
2:00 o'clock p.m.

B e f o r e:

HONORABLE JACK B. WEINSTEIN, U.S.D.J.

(Motion)

I hereby certify that the Stenotype notes recorded on this pad are true and accurate notes of the proceedings contained therein.

EMANUEL KARR
OFFICIAL COURT REPORTER

Emanuel Karr

Official Court Reporter
U.S. District Court

Appearances:

ROBERT A. MORSE, ESQ.,
United States Attorney for the
Eastern District of New York

BY: STEPHEN M. BEHAR, ESQ.,
Assistant U. S. Attorney

JAMES LaROSSA, ESQ.,
Attorney for Lawrence D'Allesandro, Jr.
and Lucy D'Allesandro.

RONALD FISCHETTI, ESQ.
Attorney for James Torturo

THE CLERK: For trial, United States of American against Lawrence D'Allesandro, James Torturo and Lucy D'Allesandro.

THE COURT: Are you ready for trial?

MR. BEHAR: The government is ready, your Honor.

MR. LaROSSA: The defendants are not ready, your Honor.

THE COURT: Why not?

MR. LaROSSA: As your Honor is probably aware, on Friday we brought to the attention of the Court that one of the government witnesses, a co-conspirator, a defendant, Mr. DeFlories, had informed the Court at the time of taking a plea that he had been treated by a doctor for a psychiatric problem.

On Tuesday last, motions were filed and served upon the United States Attorney demanding information under Brady v. Maryland with respect to that information.

On Friday I received a phone call from Miss Lane of your chambers informing me that the Court would be ready today. I informed her at that time that I had not received the information

ordered by the Court on Friday morning.

Sometime after the closing of business on Friday, and I honestly don't know what time it was, one of my sons received a message at home, and I understand a message was left in my office as well, by Mr. Behar, giving us the name of the Bensonhurst Mental Hygiene Clinic, an address and the name of a doctor Paduk as the doctor who Mr. Behar believed was the treating physician.

On three different occasions I personally called the Bensonhurst Mental Hygiene Clinic and got no answer.

Your Honor, this morning, Mr. Fischetti called and was informed by a Mary Calderelli that Dr. Paduk would be unavailable until Wednesday and that they had no way of contacting Dr. Paduk, although she was willing to take our phone number and in the event Dr. Paduk did call, which event was unexpected, she would tell him.

THE COURT: Where is Dr. Paduk's office?

MR. LaROSSA: He is associated with the Bensonhurst Mental Hygiene Clinic.

THE COURT: Doesn't he have an independant office?

MR. LaROSSA: If he does, I don't know, she refused to give us any further information with respect to it.

THE COURT: All of these doctors have independent offices.

Did you look him up?

MR. LaROSSA: This all happened rather quickly this morning.

THE COURT: What is his name?

MR. LaROSSA: Doctor Paduk, P-a-d-u-k.

THE COURT: Do you have his first name?

MR. LaROSSA: No first name.

THE COURT: Would you get me the Brooklyn telephone book, please (addressing court aide)?

Yes?

MR. LaROSSA: In addition to that, Mr. Behar informed us this morning that certain Brady material has come to his attention. One item was that there is Grand Jury testimony of Mr. Manfre wherein Mr. Manfre -- I hope I am quoting Mr. Behar correctly -- he can correct me if I am not -- failed to identify a single photograph of Mr. Torturo.

Is that correct?

MR. BEHAR: Yes, your Honor.

You are right.

MR. LaROSSA: I submit that at this time, and I am not sure whether we have a Wade problem as well, and certainly there was no motion made and there would not have been since we were under the impression that identification would be made in the courtroom, and we were not aware of any single photograph attempt at identification, and I am not sure that there is a single photograph identification in this case. I just don't know the answer to that, and I have not seen the Grand Jury testimony in question. However, I think it raises another question as to whether there should be an additional pre-trial hearing and I submit to the Court that I don't think we can determine that until we see the testimony complained of.

THE COURT: Well, where is the Grand Jury testimony?

(A document was then handed to the Court.)

THE COURT: Mark the Grand Jury testimony. Has that been turned over to counsel for

the defendant?

MR. BEHAR: No, your Honor, I was waiting for your Honor to come in and I was planning to make the 3500 material presentation of today's witnesses.

THE COURT: Including the Grand Jury testimony?

MR. BEHAR: Well, this witness, we don't anticipate taking the stand today, but as I told Mr. LaRossa outside the courtroom, I was going to give him it and the photograph in question.

THE COURT: What do you mean by a single photograph identification? You only gave him one instead of a whole series?

MR. BEHAR: The Department of Justice attorney at the Grand Jury, as the minutes will reveal, asked the defendant -- may I quote?

THE CLERK: Grand Jury testimony marked as Court's Exhibit 1.

THE COURT: Do you have a date of that?

MR. BEHAR: May 12, 1972, your Honor.

Quite frankly, your Honor, there were two questions that came up in reviewing the

Grand Jury testimony, and Mr. LaRossa hasn't had a chance to see them as yet. The departmental attorney was asking the defendant if he knew a fellow by the name of Joe, and the witness answered, "He is an acquaintance and I met him through one of the defendants.

"How many times did you see him?

"Joe?

"Yes.

"Twice, three times."

Then the departmental attorney put him this photograph of James Torturo and asked the witness if he recognized the person in the photograph, and he answered:

"No, sir.

"Have you ever seen the person before?

"No, sir.

"That is not Joe?

"No, sir."

There was extended discussion on whether this photograph was a photograph of Joe, and the Joe being referred to is Joseph Fucillo.

Now, there is a question of whether or not the witness was mistaken as to what the

departmental attorney was asking him or whether or not he recognized the defendant Fucillo from the photograph. The witness went on to testify about his -- about some meetings with Fucillo, and on the stand, on Tuesday or Wednesday, whenever it comes, the witness will testify to subsequent meetings with Fucillo after his Grand Jury appearance.

THE COURT: Well, what do you want?

On the basis of that, take the Grand Jury testimony and look at it.

Mark the exhibit, the photograph, Exhibit 1A.

THE CLERK: As government's exhibit?

THE COURT: No. Make it Court Exhibit 1A.

THE CLERK: Court's Exhibit 2 and Exhibit 3, two photographs.

MR. LaROSSA: Your Honor, it has 41 pages, I have to sit down and read them.

THE COURT: All right.

(Continued on next page.)

MR. LaROSSA: I think that I ought to make a little more record on Dr. Paduk.

May I assume that your staff has not been able to find his name?

THE COURT: Is that P-a-d-u-k?

There is no one in Brooklyn with that name.

MR. LaROSSA: Is that the spelling that you, Mr. Behar, gave me?

MR. BEHAR: That is the spelling that we had gotten from the witness.

THE COURT: Where is the witness? Is he in the building?

MR. BEHAR: No, your Honor.

THE COURT: Get him in here tomorrow and find out.

MR. LaROSSA: May it please the Court: I want the Court to be fully aware that no continuance was ever asked for in this case except for the publicity that occurred in the past, and it is not our intention today to look to continue this case in any way whatsoever. It doesn't help our clients. We are ready to go ahead.

However, I don't think there is any

1 question about the fact that that was clear
2 Brady material and should have been exposed to
3 us a long time ago when the demand was made, and
4 I think that the fact that Mr. Behar, and I am
5 sure he erroneously believed this, believed it
6 wasn't Brady material, he didn't do it on
7 purpose, but he did not in effect get that
8 material to us until so late on Friday night,
9 and this is not his fault, but I went out to
10 dinner with my wife, and by the time I got home
11 and could get to a Mental Clinic, well, they
12 were closed, and all I've had is today.
13 Your Honor, I think this thing requires
14 some investigation because it is very important --
15 THE COURT: Give my secretary, Miss Susan
16 Karr, the name and the address of the people you
17 called and get them on the phone and find out
18 from the secretary where this doctor can be
19 reached and if he can call us back. If she
20 doesn't believe that you are calling on behalf
21 of the court, tell her if I don't get the
22 information I am going to send a marshal down
23 to bring her into court so I can examine her.
24 I want to know where the doctor is and I want
25

to know it at once.

(At this point, Mr. LaRossa conferred with the Judge's law secretary.)

MR. LaROSSA: May we read this (indicating Grand Jury testimony)?

THE COURT: Well, now, what else do you need?

You want to know about your motion to suppress, I take it?

Based on the information I have, I am not going to grant that motion.

I think under United States versus Harris, 403 U.S. 573 and U. S. v. Sultan, I have the slip sheet, 2nd Circuit, July 5, 1972, page 3935, there is enough corroboration here in that the ownership and control of the safe deposit vault by the mother and son is rather an unusual circumstances which confirms the informant's statement and the statement that he had seen bills meeting the description of those used at the time of the sale, is in itself strongly confirmatory.

That, plus the declaration against interest aspect, under these cases, seems to me

to be sufficient to bring it within the concept of a valid search, bearing in mind that this is not a search without a warrant. If it were a search without a warrant, it would clearly be suppressible, but when you are dealing with a warrant, I think the courts require somewhat less, and since you have had a magistrate consider the matter and make a determination. It is not a clear-cut case by any means, and it may be reversed, but I think for the purposes of this preliminary discussion, I am going to deny the motion.

MR. LaROSSA: Would your Honor permit me to add to this record --

THE COURT: Certainly.

MR. LaROSSA: (Continuing) -- that the defendant is single and lives at home, and if there were a hearing on the motion I think Mr. Behar would be willing to stipulate that he lives at home and is single.

THE COURT: I assume that for the purpose of the motion.

MR. LaROSSA: For the purpose of the motion only.

Now, with respect to Sultan, particularly may I note that the difference is this: that is Sultan there was an informant named who was a relative of the defendant and who certainly had no reason not to tell the truth; in that particular case it was a very peculiar situation, in Sultan.

I think Harris is distinguishable equally.

You will note my objection to the Court's ruling.

THE COURT: Yes, it is a close case, it has given me a good deal of concern.

MR. BEHAR: Your Honor --

THE COURT: Yes?

MR. BEHAR: While we are dealing with preliminary motions, I informed Mr. LaRossa today, and I supplied him with a copy of an indictment, United States of America against Anthony Azzara, John DeFlories, Eugene DeFlories and Marie Brazzo. Your Honor, John DeFlories is one of the -- is going to be one of the government's witnesses in this case.

Your Honor, John DeFlories appeared before the Grand Jury in re that other indictment, and

the government submits that John DeFlories' Grand Jury testimony at that time bears no relevancy to this case. However, if your Honor would want to, I will offer up those Grand Jury minutes for your Honor's in camera inspection.

THE COURT: Well, I dislike having in camera inspections, I am really in no position to determine.

Let me see, mark that Grand Jury testimony set of minutes.

Did that result in an indictment?

MR. BEHAR: Yes, your Honor.

THE COURT: Has it been tried?

MR. BEHAR: No, your Honor.

THE COURT: Where is it before?

MR. LaROSSA: Judge Dooling, according to this (indicating indictment).

MR. BEHAR: Yes, it is.

THE CLERK: Court's Exhibit 4.

THE COURT: How am I going to tell? I have no basis of determining whether this is going to help or hurt the defendants. I don't know enough about the case.

MR. LaROSSA: Your Honor will note that

Judge Feinberg's decision in United States against Cresona said that he or any member of the judiciary should not be in that kind of a position but that the defense lawyer is the one to determine whether or not the testimony prior made or taped, in that particular case, would help the defendants or aid them in their defense.

THE COURT: What is DeFlories' position? Is he going to testify in this case?

MR. BEHAR: I think so, your Honor.

THE COURT: Well, so he is not going to be in any worse trouble if people know, is he?

MR. BEHAR: I honestly don't know, your Honor. It is Mr. Bashian's case. I am not at all familiar with it.

THE COURT: You had better get Mr. Bashian up here, if he doesn't want this turned over.

What kind of a case is United States against Azzara?

MR. BEHAR: It is a --

May I?

MR. LaROSSA: Sure.

(The indictment was handed to Mr. Behar.)

MR. BEHAR: It is a conspiracy case under

the drug laws, your Honor, and charges all four of the defendants with conspiracy to import into the United States from South America quantities of cocaine and to possess, with intent to distribute, quantities of cocaine.

THE COURT: Well, why don't you check with your associate and have him explain to me why it would be dangerous to turn this over?

You are a former United States Attorney, aren't you?

MR. LaROSSA: Yes, sir.

THE COURT: To turn it over to a former United States Attorney in connection with this case.

I guess until Mr. DeFlories testifies, you don't really need this?

I'm not going to look at it, because I can't tell anything by looking at it.

MR. LaROSSA: May we have an opportunity to examine these?

THE COURT: Do you want to do that before we select a jury?

MR. LaROSSA: Oh, yes, sir.

THE COURT: Oh, yes, take a few minutes.

(A fifteen minute recess was then taken.)

MR. LaROSSA: May it please the Court, on behalf of the defendant Lawrence D'Allesandro, Jr., I most respectfully make the following application:

The defendant desires to withdraw the plea of not guilty previously interposed and to offer a plea to the second count of the indictment, No. 72 CR 970.

I should add to the Court that this is, that this plea is being made by the defendant under certain promises, that have been made to him, and I think I should like them to be fully spread out on the record if it is agreeable with the Court.

THE COURT: Yes, all right.

MR. LaROSSA: First, that the defendant Lucy D'Allesandra will be dismissed from this indictment, with prejudice, that all remaining counts in the indictment will be dismissed at the time of sentence, that a complaint that was filed within the past two weeks against the defendant before the Commissioner in this district, charging him with an attempt to influence the testimony of a witness in this

case, that that complaint and any action thereunder, will be dismissed, with prejudice, against the defendant Lawrence D'Allesandro, Jr.

THE COURT: Is that agreeable?

MR. BEHAR: That is agreeable with the government.

THE COURT: How old are you, Mr. Lawrence D'Allesandro, Jr.?

THE DEFENDANT D'ALLESANDRO: 28, your Honor.

THE COURT: Have you ever been in a mental institution?

THE DEFENDANT D'ALLESANDRO: No.

THE COURT: Have you ever had any mental treatment or difficulty?

THE DEFENDANT D'ALLESANDRO: Yes, sir. In the service.

THE COURT: When was that?

THE DEFENDANT D'ALLESANDRO: When I was 19, I believe.

THE COURT: What was the complaint at that time?

THE DEFENDANT D'ALLESANDRO: I don't know. I was 4-F. I really didn't know.

THE COURT: Were you ever treated?

THE DEFENDANT D'ALLESANDRO: No, your Honor.

THE COURT: Have you ever taken drugs?

THE DEFENDANT D'ALLESANDRO: Yes.

THE COURT: When?

THE DEFENDANT D'ALLESANDRO: At the time of the involvement.

THE COURT: Are you taking them now?

THE DEFENDANT D'ALLESANDRO: No.

THE COURT: Have the defendant tested for drugs today, if possible.

Do you take any medication?

THE DEFENDANT D'ALLESANDRO: No.

THE COURT: What drugs were you taking?

THE DEFENDANT D'ALLESANDRO: Heroin.

THE COURT: Do you understand what is going on now?

THE DEFENDANT D'ALLESANDRO: Yes.

THE COURT: Have you discussed this with your parents?

THE DEFENDANT D'ALLESANDRO: Yes.

THE COURT: Have you discussed this with your client, and in your opinion, is he capable

of understanding the nature of this plea and its consequences?

MR. LaROSSA: I believe he completely understands it, your Honor.

THE COURT: Have you explained the constitutional and statutory rights that he waives when he pleads guilty?

MR. LaROSSA: I did, your Honor.

If you want me to recite them, I will.

THE COURT: Do you understand that you have the right to a jury trial and many other rights, and that you have a very able lawyer that can bring in witnesses on your behalf and evidence on your behalf and that the government would have to prove their case beyond a reasonable doubt?

THE DEFENDANT D'ALLESANDRO: Yes.

THE COURT: And you would have a right to appeal my decision on any motions?

THE DEFENDANT D'ALLESANDRO: Yes, sir.

THE COURT: Has anyone made any threats or promises other than those stated on the record before you?

THE DEFENDANT D'ALLESANDRO: No.

THE COURT: Are you doing this voluntarily?

THE DEFENDANT D'ALLESANDRO: Yes.

THE COURT: What is the penalty here?

MR. BEHAR: Zero to fifteen years, possible three years' special parole and $25,000 fine.

THE COURT: Do you understand that you can get fifteen years in prison and three years' special parole and $25,000 fine?

THE DEFENDANT D'ALLESANDRO: Yes.

THE COURT: Nobody has discussed the case with me. We will have a probation report and then I will discuss it with the other judges and hear you and your attorney and only then will I decide. Since this is a very serious offense, and the possibility of a substantial prison term is before you.

Do you understand that?

THE DEFENDANT D'ALLESANDRO: Yes.

THE COURT: In these cases prison is usually called for. Do you understand that?

THE DEFENDANT D'ALLESANDRO: Yes.

THE COURT: Now, tell me what you did in connection with this count.

THE DEFENDANT D'ALLESANDRO: Are you

speaking to me?

THE COURT: Yes.

THE DEFENDANT D'ALLESANDRO: I did what it says, your Honor.

THE COURT: Tell me in your own words what you did.

THE DEFENDANT D'ALLESANDRO: You know, I possessed an ounce of heroin and distributed an ounce of heroin.

THE COURT: Who did you sell it to?

THE DEFENDAN D'ALLESANDRO: To Gary Manfre, your Honor.

THE COURT: How much did you sell it for?

THE DEFENDANT D'ALLESANDRO: I don't remember the exact amount.

THE COURT: Well, about how much was it?

THE DEFENDANT D'ALLESANDRO: About $1,000.

THE COURT: Where did you get it from?

THE DEFENDANT D'ALLESANDRO: I had it.

THE COURT: Where did you get it?

THE DEFENDANT D'ALLESANDRO: I bought it.

THE COURT: Who did you buy it from?

THE DEFENDANT D'ALLESANDRO: You know, from a person.

THE COURT: You mean you don't want to tell me; is that it?

THE DEFENDANT D'ALLESANDRO: It is not that I don't want to tell you. It was a long time ago.

THE COURT: What did you pay for it?

THE DEFENDANT D'ALLESANDRO: I paid about $800 for it.

THE COURT: Any further inquiry that I should make?

MR. BEHAR: I cannot think of any, your Honor, but just for the record, the promises that the United States Attorney's office has made, of course, depend upon, will be fulfilled on the day of sentencing as far as the dismissing of the counts go.

MR. LaROSSA: That is understandable.

THE COURT: Any questions that you can think of?

MR. LaROSSA: I don't believe so.

THE COURT: Are you making this plea because you think you are guilty or because you want to get your mother off?

THE DEFENDANT D'ALLESANDRO: Not because

of that, because I am guilty.

THE COURT: Are you guilty or what?

THE DEFENDANT D'ALLESANDRO: Yes, your Honor.

THE COURT: Now, Mrs. D'Allesandro, may I see you up here?

MR. LaROSSA: I should tell you, may it please the Court, that Mr. Behar, before any discussion about disposing of this matter in this case, informed me voluntarily that Mrs. D'Allesandro was to be dismissed from the conspiracy count in this case, notwithstanding any discussions we had.

MR. BEHAR: Yes, your Honor.

THE COURT: So Mr. D'Allesandro's plea has nothing to do with Mrs. D'Allesandro's participation in the conspiracy, if there was one.

She would be in connection with the perjury count.

MR. LaROSSA: Yes.

THE COURT: You understand your son is pleading guilty here. Is he doing that because he is guilty here?

MRS. D'ALLESANDRO: I don't understand it,

your Honor. I never understood the whole thing from the beginning.

THE COURT: Did you participate in this offense in selling the heroin?

MRS. D'ALLESANDRO: No, your Honor.

THE COURT: You didn't know anything about it?

MRS. D'ALLESANDRO: No, your Honor.

THE COURT: All right. I will read the count to you:

"On or about the 16th day of February, 1972 within the Eastern District of New York, the defendant Gary Manfre and the defendant Lawrence D'Allesandro, Jr. and the defendant James Tortura did knowingly and intentionally distribute approximately one ounce of heroin, a Schedule I narcotic drug controlled substance.

How do you plead, guilty or not guilty?

MRS. D'ALLESANDRO: Guilty.

THE COURT: All right. I accept the plea.

How long will the probation report take?

BY MR. GOLD: Between six and eight weeks.

THE COURT: Why so long? This is a serious

crime.

BY MR. GOLD: Because we have so many cases downstairs, your Honor. We will do the best we can.

THE COURT: We will put it on for sentence on November 30th at 10:30 a.m.

Have the probation report ready at that time.

MR. LaROSSA: Would it be an imposition to put it on at 10:00 o'clock? A judge in the Southern District has put me down for a sentence at 10:30 on that date.

THE COURT: All right. We will put it on for December 1st.

MR. BEHAR: Your Honor, may the government make a motion on the bail situation?

THE COURT: Yes.

Wait until I take the other plea.

MR. LaROSSA: May Mrs. D'Allesandro sit down, now?

THE COURT: Yes. You both may sit down.

MR. FISCHETTI: With respect to the defendant James Torturo, I respectfully move to withdraw his plea of not guilty previously

entered and plead guilty to count 2 of indictment of Indictment 72 CR 970.

With respect to that plea, I also would like to inform the Court that certain promises have been made in that the remaining counts in the indictment will be dismissed at the time of sentence and certain matters now pending in the Magistrate's office naming Mr. Torturo as defendant regarding one John DeFloores will be dismissed by the government at the time of sentencing, with prejudice.

MR. BEHAR: The government has made those promises.

THE COURT: How old are you, Mr. Torturo?

DEFENDANT TORTURO: Twenty-six.

THE COURT: When were you twenty-six?

DEFENDANT TORTURO: September 20th.

THE COURT: Are you married?

DEFENDANT TORTURO: Yes.

THE COURT: Where is your wife?

DEFENDANT TORTURO: Sitting over there.

THE COURT: Have her come up.

Do you have any children?

DEFENDANT TORTURO: Two.

THE COURT: How old are they?

DEFENDANT TORTURO: Five and a half and four and a half.

THE COURT: Have you ever been in a mental institution?

DEFENDANT TORTURO: No.

THE COURT: Have you ever received any mental treatment or any mental troubles?

DEFENDANT TORTURO: No.

THE COURT: Have you ever taken drugs?

DEFENDANT TORTURO: Yes.

THE COURT: What?

DEFENDANT TORTURO: Heroin.

THE COURT: When?

DEFENDANT TORTURO: At the time of the indictment.

THE COURT: Are you taking them now?

DEFENDANT TORTURO: No.

THE COURT: Are you taking any other drugs or medication?

DEFENDANT TORTURO: No.

THE COURT: Have this man tested for drugs today.

How is your mind now; is it clear?

DEFENDANT TORTURO: Yes.

THE COURT: Have you discussed this with your client?

MR. FISCHETTI: Yes, fully and completely.

THE COURT: Have you explained all the rights he gives up?

MR. FISCHETTI: Yes, I have.

THE COURT: Does he understand what is going on now, in your opinion?

MR. FISCHETTI: In my opinion, yes.

THE COURT: How about your, Mrs. Torturo? Does your husband understand what is going on?

MRS. TORTURO: Yes.

THE COURT: Has he discussed it with you?

MRS. TORTURO: Yes.

THE COURT: Has anybody made any threats or promises other than those just stated to induce you to plead guilty?

DEFENDANT TORTURO: No.

THE COURT: Are you doing this voluntarily?

DEFENDANT TORTURO: Yes.

THE COURT: Do you know you can be sentenced to fifteen years plus three years' special parole and $25,000 fine for this?

DEFENDANT TORTURO: Yes.

THE COURT: And the Court considers this a serious crime and the possibility of you going to jail is very substantial.

DEFENDANT TORTURO: Yes.

THE COURT: We won't decide the sentence until after you get a probation report and I have discussed it with the other judges and I hear you and your attorney.

Do you understand that?

DEFENDANT TORTURO: Yes.

THE COURT: I don't know what you are going to get as a penalty myself.

DEFENDANT TORTURO: Yes, sir, I understand.

THE COURT: Do you have any questions you want to ask me?

DEFENDANT TORTURO: No.

THE COURT: Tell me what you did in connection with this offense?

DEFENDANT TORTURO: I delivered an ounce of heroin to Gary Manfre.

THE COURT: Where did you get it from?

DEFENDANT TORTURO: I obtained it.

THE COURT: Where?

DEFENDANT TORTURO: From a friend. It was just given to me. I picked it up. I don't know who gave it to me. I picked it up somewhere.

THE COURT: You mean you didn't purchase it yourself?

DEFENDANT TORTURO: No, sir.

THE COURT: How much were you to get for it? For this service?

DEFENDANT TORTURO: Well, I didn't speak of price. I didn't get any price. I wasn't paid.

THE COURT: Did you know it was heroin?

DEFENDANT TORTURO: Yes. I knew it was heroin.

THE COURT: Well, if you plead guilty now, you know you give up the right to a jury trial which will be given to you immediately and you give up all your constitutional rights. Do you understand that?

DEFENDANT TORTURO: Yes.

THE COURT: Have you explained all the rights he gives up?

MR. FISCHETTI: Yes.

THE COURT: Any questions I ought to ask

him?

MR. BEHAR: I think not.

THE COURT: Do you have any questions you want to ask me, madam?

MRS. TORTURO: No.

THE COURT: Do you have any questions?

DEFENDANT TORTURO: No.

THE COURT: The charge is that on or about the 16th day of February, 1972, within the Eastern District of New York, the defendant Gary Manfre and the defendant Lawrence D'Allesandro, Jr., and the defendant James Torturo did knowingly and intentionally distribute approximately one ounce of heroin, a Schedule I narcotic drug controlled substance.

How do you plead, guilty or not guilty?

DEFENDANT TORTURO: Guilty.

THE COURT: I will accept your plea.

Now, I will hear your application as to bail.

MR. BEHAR: Your Honor, at this time, the government would move for the remand of both defendants pending their sentence. They have pleaded guilty and admitted to a crime, and as

your Honor is aware, the government has kept many of the witnesses in this case under protective custody at substantial expense and inconvenience to everyone concerned.

Though the pleas have been entered in satisfaction of all the charges, the government still has probable cause to believe that witnesses were threatened in this case, that guns were discharged and that guns were aimed at witnesses and for those reasons, in view of the fact that the defendants have entered guilty pleas, the government would move that the defendants be remanded to jail at this time.

MR. LaROSSA: May I be heard?

May it please the Court: I think you ought to be aware that we found out this morning that Mr. DeFlories, although kept in protective custody, is actually serving a state sentence and was, that is, Manfre, -- I beg your pardon -- was writted here because he was in state custody and is presently serving that state custody here at whatever institution the government so chose to put him. We dispute any of the violence thatthe United States Attorney

has suggested and frankly, the witness who has testified that there was a threat of violence, the Court should know is the same witness we are talking about with the psychiatric background.

I think if given the opportunity to obtain affidavits between now and the date of sentence, I think I could show the Court beyond any doubt that the witness who alleged he was threatened is a violent person by nature and having nothing to do with this case, has threatened with a weapon, two or three people, having nothing to do with this.

Just our investigation has disclosed this. I don't know how relevant that is to punishment, but I think you should understand these facts.

Now, Mr. DeFlories apparently pleaded guilty and is in custody based upon this plea of guilty and Mr. Manfre is in custody, based on a completely different charge in a state court.

THE COURT: Fucillo is dead.

MR. BEHAR: Yes.

THE COURT: Lawrence D'Allesandro is here and he pleaded guilty and James Torturo is

here and he pleaded guilty and Gary Manfre is where?

MR. BEHAR: In protective custody. He was in state custody that was supposed to end in seven days. We writted him out of state custody for what we felt was necessary protection. To my feeling, he is not getting credit for time served while in our protective custody.

THE COURT: What are you going to do? Keep him in protective custody until after sentence?

MR. BEHAR: Yes. We also have families of these witnesses in protective custody. We have John DeFlories in protective custody, who is at liberty. I thought DeFlories is serving a sentence.

MR. LaROSSA: He is serving -- Gary Manfre, if he writs him --

THE COURT: Manfre's sentence is due to expire in seven days.

MR. LaROSSA: Well, your Honor, Mr. DeFlories has pleaded guilty of the charge before the court here andis awaiting sentence. I would like your Honor to understand this: that

approximately two weeks ago when we came before this Court, where the defendants were facing more serious charges than right now, since they are only facing one count of this indictment, what Mr. Behar has stated is a serious charge, discharging a weapon, has been dismissed, and the question is will the defendants come to court -- or will the defendants come to court when demanded.

Your Honor can state certain rules on a daily basis, that is, as to reporting, to come in here and sign in. We have changed the times when it was more convenient for the defendants and the defendants have complied each and every day, signing the register as demanded. You know, this court trial was scheduled for tomorrow -- we had no trouble getting them in here today, the day before the trial. They were in this courthouse one hour before the trial. They have been here all the time we have been supposed to.

If I called them and told them to be here in a half hour, they would be here. I think that deserves something of a consideration, quite frankly.

THE COURT: Yes.

MR. LAROSSA: There are an awful lot of things we must bring to this Court's attention between now and December 1st, I submit, because we rate it as a serious charge and I think there are some very mitigating circumstances that you should hear about --

THE COURT: Well --

MR. LAROSSA: That might help you in deciding what their punishment should be.

Now, I cannot compile all the mitigating circumstances with them in jail, and quite frankly, some of them are very personal to both defendants.

I submit that they have shown this Court a certain loyalty, if that is the right word to use, and I don't know if that is the proper word, in complying to the letter with the Court's instructions, and they were here this morning, knowing what they faced, and I think they deserve liberty until December 1st, based upon that.

THE COURT: Are you working now, Mr. D'Allesandro?

DEFENDANT D' ALLESANDRO: No, I am on compensation, your Honor.

THE COURT: You are still on compensation?

DEFENDANT D'ALLESANDRO: Yes.

THE COURT: How about you Mr. Torturo?

DEFENDANT TORTURO: Yes, I am.

THE COURT: You are still working?

DEFENDANT TORTURO: Yes, for myself.

THE COURT: Did you work today?

DEFENDANT TORTURO: No, not today, I came to court.

DEFENDANT D'ALLESANDRO: Could I have my operation that I was supposed to have?

THE COURT: How long will that take?

DEFENDANT D'ALLESANDRO: A week in the hospital, your Honor.

MR. LAROSSA: Mr. D'Allesdandro was scheduled for an operation on what was to be the first day of the trial before the adjournment, because of the publicity.

THE COURT: What is it for?

DEFENDANT D'ALLESANDRO: A dislocated shoulder, it is very painful.

MR. BEHAR: Your Honor, the only thing I have to say is, as I outlined to your Honor, when I applied for increased bail in this case, that we

do have this history of threats to the witnesses, we do have the comments in the transcript of the tape about -- and made at the Westbury Courthouse-- the comment about going to a kangaroo country. Now it seems to be more than ever that the defendants have a reason to flee the jurisdiction of the Court, and weighing against their liberty of movement between now and the time of sentence we have the restrictions on approximately six people that are being kept in custody, protective custody.

THE COURT: The bail is what now?

MR. BEHAR: Totally, your Honor, the bail is $55,000 on each defendant.

MR. LAROSSA: Judge, may I respond to that because we were here two weeks, and Mr. Behar asked for an increase in bail in this case, and he said to your Honor that there was 65 years liability in this case, plus a very serious charge of threatening a witness, and I think his remark was that we were up to somewhere around seventy five years, that is what the record shows, but nobody ran at that time, and we are now down to 15 years, and a gross 15 years, and I don't see why either of these men would run now. They have had every opportunity to run every

1
2 single day they have been out -- and by the way, I
3 might add that each time that we have moved for
4 specific information from this Court, we have found
5 that -- well, Manfre was a witness, and we found
6 then another individual who was a witness, and the
7 testimony quite frankly became overburdening as
8 far as their facing the charges in this courtroom,
9 and they were aware of that from day to day, each
10 time it was disclosed to us by the Government, because
11 of the Court's order or not, and we found out there
12 were more witnesses, and they chose not to run,
13 they came here this morning.
14 THE COURT: Well, I have set a very short
15 timetable as far as cutting the probation report
16 down, in less than half, and you will have to give
17 this priority, I don't want any delays on it (address-
18 ing Probation Officer.)
19 I think in view of the fact they have been
20 appearing as required, and in view of the relation-
21 ship which I have observed with the mother and wife
22 and the child -- with the children -- well, I am
23 going to continue the bail at a very substantial
24 amount -- you understand, gentlemen, that your
25 activities during the next month will be closely

scrutinized so that if you do anything untoward, such as not being available when you should be, you will get the whole fifteen years.

DEFENDANT D'ALLESANDRO: Yes, your Honor.

THE COURT: You will probably get a substantial sentence anyway, but there will be no mercy on you, and in addition you will be in for bail-jumping -- what is the penalty?

MR. LAROSSA: Five years.

MR. BEHAR: Five years.

THE COURT: You will get that five years on top, plus the fact --

DEFENDANT D'ALLESANDRO: I understand.

THE COURT: Plus the fact that I will consider that the promises that have been made to you may not have to be fulfilled, that is the Government's, and I will allow you to withdraw your plea of guilty and go ahead with the whole trial.

Is that clear?

DEFENDANT D'ALLESANDRO: Yes, your Honor.

THE COURT: So I don't suggest that you do anything foolish.

Do you have any questions?

MR. LAROSSA: Just one.

THE COURT: Well, maintain the same reporting schedule for the next month.

MR. LAROSSA: Mr. D'Allesandro wants to go into the hospital, assuming we give the United States Attorney some advance notice, that is the doctor's name and the hospital, can we then overcome that signing in during the period?

THE COURT: Oh, yes, sure.

Yes, the Government can check by phone call.

Anything further, gentlemen?

MR. LAROSSA: No, sir.

MR. FISCHETTI: No, sir.

THE COURT: Thank you very much, gentlemen.

MR. BEHAR: Thank you, your Honor.

. . . . . .

FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JUL 15 11 33 AM '74

CLERK
U.S. DISTRICT COURT
EASTERN DISTRICT
NEW YORK

- - - - - - - - - - - - - - - - - -X

LAWRENCE D'ALLESANDRO, :

Plaintiff, :

-against- : MEMORANDUM AND ORDER

UNITED STATES OF AMERICA, :

Defendant. : 74C 1033

- - - - - - - - - - - - - - - - - -X

A P P E A R A N C E S:

Lawrence D'Allesandro, Pro Se

WEINSTEIN, D.J.

The Clerk of the Court will treat the attached papers from Lawrence D'Allesandro as a civil action to set aside his conviction. A copy of the papers and this Memorandum and Order shall be served upon the United States Attorney and the attorney for the defendant in his criminal proceeding.

The United States Attorney shall make an appropriate investigation and report to the court in writing. It shall include listening to the recording of the plea, if that is available, and examining all appropriate transcripts, including the transcript on sentencing.

A copy of this Memorandum and Order shall be sent to Mr. D'Allesandro, to the United States Attorney, and to the attorney for the defendant in the criminal proceeding.

So ordered.

Dated: Brooklyn, New York
July 10, 1974

Jack B. Weinstein
U.S.D.J.

723833
Behar
Cl 12-1-72

FILED A 63

Lawrence D'Allesandro
Pembroke Station
Danbury, Conn. 06810
July 3, 1974

JUL 15

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

740 1033

The Honorable Jack B. Weinstein
United States District Court
Eastern District Of New York
Brooklyn, New York 11201

Dear Sir:

UNITED STATES v. D'ALLESANDRO, JR.
72-CR-970

I'm now writing this informal letter with the hope and expectation that you treat it as a formal Motion 2255, to vacate my sentence, or offer me whatever relief the Court may deem necessary.

Accompanied with this letter and/or Motion, is a section of my sentencing minutes, before you on October 30th, 1972. If you carefully examine these nine (9) pages, you will see that I never plead guilty to the crime which I'm now incarcerated for. This is but one (1) of the two (2) points, which I now want to bring before you at this time. My second point is that on page (18) my Attorney Mr. La Rossa, clearly stated that a promise was made that the charge against my Mother, Lucy D'Allesandro, will be dismissed. You will also note on page (19) that Mr. Behar, the Assistant U.S. Attorney, also agreed to this promise and clearly stated so for the record.

On pages 25 & 26, you will note that my Mother was made to plead guilty to the indictment as it applied to her. The Government, has than failed to uphold the promise that was made to me and with all due respect, I now wish to withdraw my plea for the following reasons.

In MACHIBRODA v. U.S. 82 S. CT. 510 (1962), "a guilty plea, if induced by promises or threats which deprive it of the character of a voluntary act, is void, and conviction based upon such a plea is open to collateral attach." or "that the petitioners pleas of guilty had not been voluntary, but had been induced by promises made by the Assistant United States Attorney, in charge of the prosecution;" The last sentence in this infamous decision must now be accordance with the instant matter before this Honorable Court. Since the Assistant United States Attorney, in charge did made such a ambiguous promise to the defendants Attorney and the Court; therefore rendering the entire sentence void, under the circumstances now presented.

(2)

I now wish to enlighten you, as to what has transpired during my twenty (20) months of incarceration. On August 1st, 1972, I was sent to Springfield, for a operation of my cronic dislocated right shoulder. During the course of the operation to correct this problem, a nerve was severed, causing me permanent disability to my right hand. I now only have partial use of my right hand and I have been advised by two (2) Specialists here at Danbury, that this will remain with me the rest of my life and will pregressively get worse. I am now faced with the realization that my right hand will be crippled for the rest of my life.

On the 25th, day of Jan. I saw the Parole Board. During the course of my parole hearing, your letter of recommendation was brought up, but I was refused Parole; after displaying a perfect institutional record. I was given a C.T.E. (continue to expiration) of which was completely against the guidelines the Parole Board uses in evaluating a inmate. My guidelines call for a period of incarceration of between (16) to (20) months. It seems to me that a perfect record with no past history of criminal behavior, had no bearing whatsoever in a persons evaluation for Parole. This in itself I find very disheartening under the circumstances.

I now appeal to you, since I do not feel that you intended for me to do my entire sentence; otherwise you would never have recommended me for Parole. I'm sure it would be very easy for a Federal Judge to check the facts that I have setforth and to see that this is the true situation that I now face.

I would now like to thank you for the help that you have given to me in the past and for whatever help you may give me concerning these present matters, setforth in this letter and/or Motion.

Very truly yours,

Lawrence D'Allesandro

Lawrence D'Allesandro
pro se
Pembroke Station
Danbury, Conn. 06810

Daniel T. Miller
(Parole Officer)

Daniel Miller, Parole Officer
"Authorized by the Act of July 7, 1955
to administer oaths (18 U.S.C. 4004)"

MR. LaROSSA: May it please the Court, on behalf of the defendant Lawrence D'Allesandro, Jr., I most respectfully make the following application:

The defendant desires to withdraw the plea of not guilty previously interposed and to offer a plea to the second count of the indictment, No. 72 CR 970.

I should add to the Court that this is, that this plea is being made by the defendant under certain promises, that have been made to him, and I think I should like them to be fully spread out on the record if it is agreeable with the Court.

THE COURT: Yes, all right.

MR. LaROSSA: First, that the defendant Lucy D'Allesandra will be dismissed from this indictment, with prejudice, that all remaining counts in the indictment will be dismissed at the time of sentence, that a complaint that was filed within the past two weeks against the defendant before the Commissioner in this district, charging him with an attempt to

case, that that complaint and any action thereunder, will be dismissed, with prejudice, against the defendant Lawrence D'Allesandro, Jr.

THE COURT: Is that agreeable?

MR. BEHAR: That is agreeable with the government.

THE COURT: How old are you, Mr. Lawrence D'Allesandro, Jr.?

THE DEFENDANT D'ALLESANDRO: 28, your honor.

THE COURT: Have you ever been in a mental institution?

THE DEFENDANT D'ALLESANDRO: No.

THE COURT: Have you ever had any mental treatment or difficulty?

THE DEFENDANT D'ALLESANDRO: Yes, sir. In the service.

THE COURT: When was that?

THE DEFENDANT D'ALLESANDRO: When I was 19, I believe.

THE COURT: What was the complaint at that time?

THE DEFENDANT D'ALLESANDRO: I don't know.

THE COURT: Were you ever treated?

THE DEFENDANT D'ALLESANDRO: No, your Honor.

THE COURT: Have you ever taken drugs?

THE DEFENDANT D'ALLESANDRO: Yes.

THE COURT: When?

THE DEFENDANT D'ALLLSANDRO: At the time of the involvement.

THE COURT: Are you taking them now?

THE DEFENDANT D'ALLESANDRO: No.

THE COURT: Have the defendant tested for drugs today, if possible.

Do you take any medication?

THE DEFENDANT D'ALLESANDRO: No.

THE COURT: What drugs were you taking?

THE DEFENDANT D'ALLESANDRO: Heroin.

THE COURT: Do you understand what is going on now?

THE DEFENDANT D'ALLESANDRO: Yes.

THE COURT: Have you discussed this with your parents?

THE DEFENDANT D'ALLESANDRO: Yes.

THE COURT: Have you discussed this with your client, and in your opinion, is he capable

of understanding the nature of this plea and its consequences?

MR. LaROSSA: I believe he completely understands it, your Honor.

THE COURT: Have you explained the constitutional and statutory rights that he waives when he pleads guilty?

MR. LaROSSA: I did, your Honor.

If you want me to recite them, I will.

THE COURT: Do you understand that you have the right to a jury trial and many other rights, and that you have a very able lawyer that can bring in witnesses on your behalf and evidence on your behalf and that the government would have to prove their case beyond a reasonable doubt?

THE DEFENDANT D'ALLESANDRO: Yes.

THE COURT: And you would have a right to appeal my decision on any motions?

THE DEFENDANT D'ALLESANDRO: Yes, sir.

THE COURT: Has anyone made any threats or promises other than those stated on the record before you?

THE DEFENDANT D'ALLESANDRO: No.

THE COURT: Are you doing this voluntarily?

THE DEFENDANT D'ALLESANDRO: Yes.

THE COURT: What is the penalty here?

MR. BEHAR: Zero to fifteen years, possible three years' special parole and $25,000 fine.

THE COURT: Do you understand that you can get fifteen years in prison and three years' special parole and $25,000 fine?

THE DEFENDANT D'ALLESANDRO: Yes.

THE COURT: Nobody has discussed the case with me. We will have a probation report and then I will discuss it with the other judges and hear you and your attorney and only then will I decide. Since this is a very serious offense, and the possibility of a substantial prison term is before you.

Do you understand that?

THE DEFENDANT D'ALLESANDRO: Yes.

THE COURT: In these cases prison is usually called for. Do you understand that?

THE DEFENDANT D'ALLESANDRO: Yes.

THE COURT: Now, tell me what you did in connection with this count.

THE DEFENDANT D'ALLESANDRO: Are you

speaking to me?

THE COURT: Yes.

THE DEFENDANT D'ALLESANDRO: I did what it says, your Honor.

THE COURT: Tell me in your own words what you did.

THE DEFENDANT D'ALLESANDRO: You know, I possessed an ounce of heroin and distributed an ounce of heroin.

THE COURT: Who did you sell it to?

THE DEFENDANT D'ALLESANDRO: To Gary Manfre, your Honor.

THE COURT: How much did you sell it for?

THE DEFENDANT D'ALLESANDRO: I don't remember the exact amount.

THE COURT: Well, about how much was it?

THE DEFENDANT D'ALLESANDRO: About $1,000.

THE COURT: Where did you get it from?

THE DEFENDANT D'ALLESANDRO: I had it.

THE COURT: Where did you get it?

THE DEFENDANT D'ALLESANDRO: I bought it.

THE COURT: Who did you buy it from?

THE DEFENDANT D'ALLESANDRO: You know, from a person.

THE COURT: You mean you don't want to tell me; is that it?

THE DEFENDANT D'ALLLSANDRO: It is not that I don't want to tell you. It was a long time ago.

THE COURT: What did you pay for it?

THE DEFENDANT D'ALLESANDRO: I paid about $600 for it.

THE COURT: Any further inquiry that I should make?

MR. BEHAR: I cannot think of any, your Honor, but just for the record, the promises that the United States Attorney's office has made, of course, depend upon, will be fulfilled on the day of sentencing as far as the dismissing of the counts go.

MR. LaROSSA: That is understandable.

THE COURT: Any questions that you can think of?

MR. LaROSSA: I don't believe so.

THE COURT: Are you making this plea because you think you are guilty or because you want to get your mother off?

of that, because I am guilty.

THE COURT: Are you guilty or what?

THE DEFENDANT D'ALLESANDRO: Yes, your Honor.

THE COURT: Now, Mrs. D'Allesandro, may I see you up here?

MR. LaROSSA: I should tell you, may it please the Court, that Mr. Behar, before any discussion about disposing of this matter in this case, informed me voluntarily that Mrs. D'Allesandro was to be dismissed from the conspiracy count in this case, notwithstanding any discussions we had.

MR. BEHAR: Yes, your Honor.

THE COURT: So Mr. D'Allesandro's plea has nothing to do with Mrs. D'Allesandro's participation in the conspiracy, if there was one.

She would be in connection with the perjury count.

MR. LaROSSA: Yes.

THE COURT: You understand your son is pleading guilty here. Is he doing that because he is guilty here?

MRS. D'ALLESANDRO: I don't understand it,

your Honor. I never understood the whole thing from the beginning.

THE COURT: Did you participate in this offense in selling the heroin?

MRS. D'ALLESANDRO: No, your Honor.

THE COURT: You didn't know anything about it?

MRS. D'ALLESANDRO: No, your Honor.

THE COURT: All right. I will read the count to you:

"On or about the 16th day of February, 1972 within the Eastern District of New York, the defendant Gary Manfre and the defendant Lawrence D'Allesandro, Jr. and the defendant James Tortura did knowingly and intentionally distribute approximately one ounce of heroin, a Schedule I narcotic drug controlled substance.

How do you plead, guilty or not guilty?

MRS. D'ALLESANDRO: Guilty.

THE COURT: All right. I accept the plea.

How long will the probation report take?

BY MR. GOLD: Between six and eight weeks.

LETTER OF UNITED STATES OF AMERICA OF OCTOBER 8, 1974 REPLYING TO D'ALLESRANDRO'S MOTION AND ORDER OF DISTRICT COURT ENDORSED THEREON REQUIRING A HEARING ON THE MOTION

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

RJD:SMB:pal
F. 740974

United States Department of Justice

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK
FEDERAL BUILDING
BROOKLYN, N. Y. 11201

A 74

October 8, 1974

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
OCT 9 - 1974
TIME A.M.....
P.M.....

Honorable Jack B. Weinstein
United States District Judge
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Lawrence D'Allesandro v. United States of America, Docket No. 74 C 1033

Dear Judge Weinstein:

I wish to express our regret for the delay in responding to your Order of July 10, 1974. However, your Order and the underlying letter by Mr. D'Allesandro were not forwarded to this office by the Office of the Clerk of the Court until September 17, 1974. A few weeks prior to that, your law clerk, Ms. Wexler, contacted me and informed me of the existence of the Order, at that time we began investigating the matter.

In late August 1974, I was informed by the Court Reporters' Office that the court reporters who recorded the minutes of Mr. D'Allesandro's plea and sentence were both on vacation and unavailable. Since that time the court reporter who recorded Mr. D'Allesandro's plea, Mr. Michael Miele, has returned. In answer to my inquiry, Miele stated that a tape recording of Mr. D'Allesandro's plea does not exist and that it was not the practice to make such recordings in October 1972.

The minutes of Mr. D'Allesandro's sentencing on December 1, 1972 were recorded by Court Reporter Fred Lewis. According to the Court Reporters' Office, Mr. Lewis is on a leave of absence. However, after some difficulty, I contacted Mr. Lewis in mid-September. At that time Mr. Lewis promised to deliver the sentencing minutes to me by September 27, 1974. I have not received those minutes as of this date.

As to Mr. D'Allesandro's claims, however, it should be noted that Mr. D'Allesandro pled guilty to, and was sen-

(2)

Honorable Jack B. Weinstein October 4, 1974

tenced under Count II of Indictment No. 72 CR 970 (transcript of October 30, 1972, pp 18-26), and all charges against his mother were dismissed. Though the transcript is not yet available, the records of the Clerk of this Court reflect that Indictment No. 72 CR 970 was dismissed against D'Allesandro's mother on December 1, 1972

Though the transcript at the time of petitioner's plea reflects that the statement "guilty" appearing on line 20 of page 26 was attributed to D'Allesandro's mother, in fact, this was the petitioner's response. The reference to Mrs. D'Allesandro was merely the result of a reporter's error. The court reporter, Mr. Miele, has informed the writer that his original stenographic notes of the plea do not contain the reference to "Mrs" at that point. A careful reading of the entire transcript supports this explanation. Though some colloquy had passed between the Court and Mrs. D'Allesandro before the response at line 20 of page 26, the immediate event before this statement by Mr. D'Allesandro was the Court's reading of count two of the indictment to Mr. D'Allesandro and the Court's asking him, "how do you plead, guilty or not guilty?" The petitioner's mother was not even named in that count of the indictment.

Therefore, Lawrence D'Allesandro's petition is based solely upon a mistake in the transcript, and not upon the facts in this case. As a careful reading of the transcript and a review of the records of the Clerk of the Court reveal, this office honored its promise to Mr. D'Allesandro that the charges against his mother would be dismissed, and Mr. D'Allesandro did enter a plea of guilty to the second count of the indictment.

Very truly yours,

DAVID G. TRAGER
United States Attorney

By: Stephen M. Behar
Stephen M. Behar
Assistant U.S. Attorney

October 9, 1974
There will have to be a hearing to consider the defendant's claims and the government's contention that the record should be corrected. The Clerk shall inform the government, the defendant and Mr. LaRossa. The government will arrange a prompt hearing at which witnesses may be required. So ordered. Jack B. Weinstein

Enc.

cc: James LaRossa
522 5th Avenue
New York, New York

LETTER OF LEGAL SERVICES ORGANIZATION OF YALE LAW SCHOOL TO THE DISTRICT COURT DATED NOVEMBER 6, 1974 AND DISTRICT COURT ORDER OF NOVEMBER 11, 1974 (LATER CANCEALED) ENDORSED THEREON

JEROME N. FRANK
LEGAL SERVICES ORGANIZATION
YALE LAW SCHOOL
NEW HAVEN, CONNECTICUT 06520
Tel. (203) 436-2210

A 76

74 C.1033

November 6, 1974

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
NOV 12 1974
TIME A.M.....
P.M.....

The Honorable Jack B. Weinstein
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Dear Judge Weinstein:

We respectfully request your permission to examine the presentence report on Mr. Lawrence D'Alessandro, Jr., who was sentenced to prison in your court on December 1, 1972, Docket Number 72-CR-970, for the illegal distribution of heroin. He is currently serving a four-year sentence at the Federal Correctional Institution at Danbury, Connecticut. We are providing legal assistance to Mr. D'Alessandro in connection with the refusal of the United States Board of Parole to grant him parole. The denial of parole is apparently grounded on information in the presentence report which Mr.D'Alessandro insists is in error. Therefore, we believe that it is of the utmost importance that we be able to verify the contents of that report.

Mr. D'Alessandro's application for parole was heard in January of this year. The Parole Board not only denied parole, but continued his sentence to expiration (C.T.E.), thus denying him any further opportunity to have a parole hearing. Mr. D'Alessandro appealed this decision, but both the Regional Director and the National Appellate Board affirmed the C.T.E. decision. This exhausted the administrative remedies available to Mr. D'Alessandro, at which time he requested our assistance.

Effective October 1, 1973, the Northeast Region of the United States Board of Parole is subject to a new set of rules and regulations (28 C.F.R., Chapter 1, Part 2) designed to establish "a national paroling policy, promote a more consistent exercise of discretion, and enable fairer and more equitable decision-making..." (§2.202.) A copy of these parole regulations is enclosed for your convenience. Included in this policy are paroling guidelines which indicate how the Board generally intends to exercise its discretion in making future parole release decisions. Section 2.20(b) states in part:

> These guidelines indicate the customary range of time to be served before release for various combinations of offense (severity) and offender (parole prognosis) characteristics.

Although the Board may render decisions outside (either above or below) the guidelines, it must provide an explanation for so doing. Generally, parole decisions conform to the prescribed guidelines.

Mr. D'Alessandro scores nine of a possible eleven points on the offender characteristic (salient factor) guideline, thus placing him in the highest (or most favorable) of four parole prognosis categories. Within this category, the customary range of time to be served for a moderate severity offense, such as possession of less than $500 of a hard drug by a user or sale of a hard drug to support one's own habit, is 12 to 16 months. That Mr. D'Alessandro was continued to expiration suggests that the Parole Board placed him in either the "very high" (possession by nonuser) or "greatest" (sale for profit) offense severity category. This is further implied by the fact that the stated reasons for denial of parole do not suggest that the C.T.E. falls outside (above) the computed guideline for Mr. D'Alessandro.

Mr. D'Alessandro insists that he was a drug-dependent user, that his offense severity category should be "moderate," and, accordingly, that he should be given favorable consideration for parole after serving 12 to 16 months. His caseworker, Mr. Dan Miller, informed us that the Parole Board did not categorize Mr. D'Alessandro's offense severity as "moderate." Mr. Miller is not authorized to reveal the contents of Mr. D'Alessandro's presentence report, but he did intimate to us that that report classifies Mr. D'Alessandro as a nonuser who sold for profit and that the Parole Board accordingly placed Mr. D'Alessandro in one of the two highest offense severity categories. Inasmuch as we are led to believe that this is inaccurate, we are anxious to review the presentence report for ourselves. Such a review is further required in order to ascertain whether there is any indication of aggravating circumstances which might justify the Parole Board's placing Mr. D'Alessandro in a severity rating different from that computed for him. (§2.20d).

In this District, attorneys are permitted to review everything in presentence reports except for the recommendations

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of probation officers. We respectfully request that you extend like permission to us in writing so that we may examine Mr. D'Alessandro's presentence report at the Federal Correctional Institution in Danbury, Connecticut. Such examination would, of course, be made under the supervision of an appropriate staff member of that institution.

Sincerely,

Richard H. Heilbron, Jr.

Richard H. Heilbron, Jr.
Yale-Danbury Project

Dennis E. Curtis

Dennis E. Curtis
Director of Clinical Studies

RHH/DEC/js

encl.

Permission to examine the Probation Report is granted. The Clerk of the Court shall notify the parties and the above applicants forthwith

Jack B Weinstein

November 11, 1974

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

W. D'ALLESANDRO, :

Plaintiff, : 74-C-1033

-against- :

UNITED STATES OF AMERICA, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

November 12, 1974

B e f o r e :

HONORABLE JACK B. WEINSTEIN, U.S.D.J.

IRA RUBENSTEIN
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: STEPHEN BEHAR, ESQ.
Assistant U.S. Attorney

JAMES LA ROSSA, ESQ.
Attorney for Defendant

:jm
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THE COURT: Good morning, Mr. D'Allesandro. Does Mr. LaRossa represent you?

THE DEFENDANT: I didn't -- I don't know, your Honor. Are you representing me?

THE COURT: Do you want him to or do you not want him to?

THE DEFENDANT: I really would, your Honor.

THE COURT: You'd like him?

THE DEFENDANT: I would like to speak to him.

MR. LA ROSSA: If your Honor has no objection, I just as soon stay here to protect his rights.

THE COURT: You want to appear pro se? Do you understand you're entitled to an attorney? The Court will be happy to appoint an attorney for you.

THE DEFENDANT: Your Honor, would it be possible --

THE COURT: If you can't afford one, --

THE DEFENDANT: I can't afford one. I want to ask your Honor if I could have an inmate represent me.

THE COURT: The inmate is where, Danbury?

THE DEFENDANT: Yes, your Honor.

THE COURT: No. It would be too difficult to transport him and we have a number of distinguished members of the Bar who I believe know more about the law than your distinguished jail friend.

THE DEFENDANT: All right, fine.

THE COURT: What do you want to do? I'm not going to -- a prisoner. Do you want somebody to represent you?

THE DEFENDANT: I don't know anything about the law. Have to have someone represent me.

THE COURT: Do you want Mr. LaRossa?

THE DEFENDANT: I can't retain him, if you --

THE COURT: Well, I would appoint him as counsel. He's entitled to a modest fee, not very much unfortunately.

All right, submit a form and you'll be appointed to represent Mr. D'Allesandro. Are you prepared to proceed?

MR. LA ROSSA: May I speak to him for just one moment?

THE COURT: Take a recess for a few minutes. His parents are here. Both mother and father are here. You may consult with them too. They're free to consult with their son if they'd like.

(A short recess was taken.)

THE COURT: Yes, I'll hear you.

MR. LA ROSSA: If we can be as formal as possible, Mr. D'Allesandro would like to speak to you himself. His concern may be he's not as familiar with

the law as someone else might be. I told him I thought you'd have a little patience and listen to him.

THE COURT: Yes, I'll listen.

MR. LA ROSSA: It's basically -- what I would like to refer the Court to is Page 25 and 26 of the transcript.

THE COURT: October 30?

MR. LA ROSSA: The pleading minutes.

THE COURT: Is that October 30, 1972? Begins at the top of Page 25, "of that, because I am guilty"?

MR. LA ROSSA: Yes, sir.

THE DEFENDANT: Because, here the Court:

"The Court: Now, Mrs. D'Allesandro, may I see you up here?

"Mr. La Rossa: I should tell you, may it please the Court, that Mr. Behan, before any discussion about disposing of this matter in this case, informed me voluntarily that Mrs. D'Allesandro was to be dismissed from the conspiracy count in this case, not withstanding any discussions we had.

"Mr. Behan: Yes, your Honor.

"The Court: So, Mr. D'Allesandro's plea has nothing to do with Mrs. D'Allesandro's participation in the conspiracy, if there was one.

"She would be in connection with the perjury count.

"Mr. LaRossa: Yes.

"The Court: You understand your son is pleading guilty here? Is he doing that because he is guilty here?

"Mrs. D'Allesandro: I don't understand it, your Honor. I never understood the whole thing from the beginning.

"The Court: Did you participate in this offense in selling the heroin?

"Mrs. D'Allesandro: No, your Honor.

"The Court: You didn't know anything about it?

"Mrs. D'Allesandro: No, your Honor.

"The Court: All right. I will read the count to you:

"On or about the 16th day of February, 1972, within the Eastern District of New York, the defendant Gary Manfre and the defendant Warren D'Allesandro, Junior, and the defendant James Tortura did knowingly and intentionally distribute approximate one ounce of heroin, a Schedule I narcotic drug controlled substance.

"How do you plead, guilty or not guilty?

"Mrs. D'Allesandro: Guilty.

1 "The Court: All right, I accept the plea."

2 THE COURT: Yes. I know, but you remember

3 what happened in this case, I had had a long colloquy

4 with you in order to determine whether you were

5 guilty. And that long colloquy ended on Page 25 and

6 you agreed through all that preliminary colloquy that

7 you were guilty. I called your mother up because of

8 your age and because she had been charged in a

9 related matter. To ask her whether she understood

10 what was going on here with her son.

11 Then, I turned to you and addressed you. I

12 will read the count to you and I addressed you, not

13 your mother.

14 Now, I don't know why the reporter has Mrs.

15 D'Allesandro pleading guilty. Are you telling me you

16 didn't say it?

17 THE DEFENDANT: In all honesty, I can't

18 remember.

19 THE COURT: Where is the mother? Bring her up

20 here and swear her in. Who is the reporter here?

21 MR. BEHAR: On that date, your Honor, Mr. Karr

22 started the proceeding, but I had spoken to both

23 court reporters. I believe Mr. Miele was the court

24 reporter.

25 THE COURT: Does he have his notes?

MR. BEHAR: I spoke to Mr. Miele about his notes on the matter and he told me he reviewed his notes and his notes reflect neither a Mr. or Mrs. at that point for the symbol. The reason he would not, he told me his usual practice is not to take that kind of information down. The notes were cryptic enough it would just be D'Allesandro.

THE COURT: Get Mrs. D'Allesandro up, the witness doesn't remember.

THE DEFENDANT: Can I say one thing, your Honor?

THE COURT: Yes.

THE DEFENDANT: Right here, says "Official Court Reporter, Emanuel Karr" with the stamp.

THE COURT: That doesn't mean he necessarily took this part of the testimony. The reporters change because they have a lot of other things to do. I remember the case very well. I remember you and I remember your mother. Swear the witness.

(continued on next page)

1 L U C Y D ' A L L E S A N D R O , called as a witness,
2 having first been duly sworn by the Clerk of the
3 Court, took the witness stand and testified as follows:
4 THE COURT: Yes, the witness, ask her if she
5 pleaded guilty.
6 DIRECT EXAMINATION
7 BY MR. BEHAR:
8 Q Miss D'Allesandro, do you recall that day?
9 A No, I don't.
10 Q Were you present in court that day?
11 A Yes.
12 Q Do you recall Judge Weinstein calling you up
13 to the table?
14 A I don't remember anything of it. It's a
15 terrible nightmare to me. I just -- I couldn't remember
16 anything, I won't. The whole thing is a nightmare to me;
17 that I don't think, I'll ever get over what they did to me.
18 Q Did you ever, to your best recollection, did
19 you ever answer Judge Weinstein's plea?
20 A I don't remember. I couldn't say yes or no
21 to your questions.
22 THE COURT: Did you plead guilty to a crime?
23 THE WITNESS: I don't remember, Judge, honestly.
24 THE COURT: I see. All right, do you want to
25 cross-examine her?

MR. BURROWS: No, sir.

THE COURT: Thank you very much, madam.

(The witness is excused.)

THE COURT: Any further witnesses here? Do you want the reporter to come up and be sworn?

THE DEFENDANT: No, your Honor, it's not necessary.

THE COURT: Do you have any recollection, Mr. LaRossa?

MR. LA ROSSA: Not any more than I do of any other case that I have handled.

THE COURT: All right. Do we have all the evidence in the case?

THE DEFENDANT: Your Honor, can I show you -- I sent you a copy -- I presume you must have read --

THE COURT: I read your letter of October 16, a copy of which you're handing me now.

THE DEFENDANT: I guess you have all the letters I've written.

THE COURT: I believe I have all that I have received.

MR. LA ROSSA: I don't know whether it's appropriate at this time, but I think Mr. D'Allesandro most probably taken the position that he's taken, here,

because of problems that we're having with prison authorities.

THE COURT: I understand that. I feel badly about the problems of probation, but --

MR. LA ROSSA: If I may just for a moment, your Honor.

THE COURT: It doesn't really help us much on this period. In any event, excuse me, I must go down to Naturalization, there are about two hundred people waiting. Can you excuse me for just a few minutes, Mr. LaRossa, about fifteen minutes and will that interfere with your calendar?

MR. LA ROSSA: I have to be in another court.

THE COURT: What time do you have to be there?

MR. LA ROSSA: Ten o'clock.

THE COURT: Well, I don't want to rush this.

MR. LA ROSSA: I want to bring to the Court's attention, is the fact that your Honor made a recommendation to probation. Mr. D'Allesandro went to Danbury, took college courses, done everything. He's supposed to become a model prisoner. After being denied, he continued to go to college and wrote you letters. I think the problem is that they have aborted your recommendation.

We find this at all times based on the kind of

crime it is, not withstanding the fact your Honor sentenced him because of this kind of crime.

THE COURT: I know, but my time -- the time is expired really to rectify that.

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MR. LA ROSSA: It hasn't expired in one respect, your Honor. You may still fit it under 4802; have been decisive with respect to it. You may not only 4208 -- but gave a strong recommendation --

THE COURT: Those recommendations are ignored. That's the short of it. There is simply -- what was the sentence?

MR. LA ROSSA: Four years.

MR. BEHAR: Four years. At the time of sentencing, your Honor specifically did not render a verdict 4208(a)(2 sentencing part of the plea at the time of sentencing by Mr. LaRossa. Was your Honor -- should make the sentence as short as possible because of the nature of the crime that the defendant would serve his mandatory time and at that time your Honor took cognizance of those facts.

MR. LA ROSSA: Frankly, what you've done, he might as well have gone in there and broken windows every day because he would serve the same amount of time.

THE COURT: No, that's not so. Because under their schedule if you want a model prisoner, he would stay in much longer.

MR. LA ROSSA: Sir, he's doing maximum time. I shouldn't have said, "broken windows," sat there like a

dummy and did nothing for three years and he gets good time.

THE COURT: What would be the point of that from his own personal lifestyle, point of view?

MR. LA ROSSA: Been ridiculous.

THE COURT: Been cutting off his nose to spite his face.

MR. LA ROSSA: He's taken the opposite approach. Rehabilitates himself in prison. We talked about it in Pennsylvania at the conference.

THE COURT: In effect, you're asking me to reduce the sentence. Let me look at the Probation report. Give me the Probation report and I'll consider that.

MR. D'ALLESANDRO: Your Honor, even after I signed, continued expiration, I still continued my schooling. After I was denied --

THE COURT: That was sensible. What's the -- all right. We'll take a short recess. Look at the Probation report, sit down and discuss it with your client and take it up with the United States Attorney and see what we can do. I won't decide this motion at this moment.

MR. LA ROSSA: Are we then in recess for the day?

3 1 THE COURT: No. We're in recess unless you want
2 to put it off until tomorrow. Depending on your own
3 problem.
4 MR. LA ROSSA: I'll stay, sir.
5 THE COURT: You want to stay?
6 MR. LA ROSSA: I will.
7 THE COURT: We'll take a recess.
8 (Recess taken.)
9 THE COURT: Yes, I have the letter from the
10 Yale service. Letter on behalf of the defendant.
11 MR. LA ROSSA: Sir, I don't want in my position
12 any records what he's done with the institutions. I've
13 been informed it's been superlative, been a model
14 inmate and worked awful hard at it. Interesting factor
15 is that notwithstanding that kind of background that
16 kind of treatment, recently out of this court on a
17 4208(a) sentence on either sentence within the last
18 two years, when the defendant was brought before the
19 Board, the Board set it to expiration as they were in
20 those days. If an inmate brought an action before the
21 local district court judge, brought back before the
22 Parole Board, he will serve his cut-off date.
23 Now, he will serve less on that ten years than
24 Mr. D'Allesandro, since he's [illegible] two years in already.
25 I don't know whether one has [illegible] do with the other.

4

1 THE COURT: I don't think they do. They're
2 based on their standards. The 4208(a) is of no
3 significance.
4 MR. LA ROSSA: On national standards, which in
5 effect abrogate your sentencing --
6 THE COURT: I understand that. That's nothing
7 much I can do about it.
8 MR. BINDER: If I may be heard at the time of
9 sentencing in this, before this Court, Mr. LaRossa
10 said in reference to your statement, "I can't get, let
11 a man like this get off without a substantial jail
12 term."
13 Mr. LaRossa said, "Of course, a substantial
14 term for a 28-year-old man, who is going to do every
15 day of it except for the major time off, the Parole
16 Board has to give him."
17 You answered, "Well, I don't know that's true.
18 I don't believe that's true."
19 And then Mr. LaRossa, "I have never seen one
20 yet under where they got off with time like that."
21 " THE COURT: I am not going to give this man
22 4208(a)(a) sentence. That's silly in this case."
23 At no point following this discussion you
24 sentenced the defendant to the four years. As I
25 recall the Probation report in this case, it was v.

5 1 full and complete. We had a -- what's the original
2 indictment involved? Several counts involve the
3 dealings in heroin over a period of a year. There was
4 a subsequent arrest for threatening a witness, one
5 witness in this case has been killed and two witnesses
6 put under protective custody. And all of this was
7 brought out at this man's sentencing. Mr. LaRossa
8 very eloquently, very thorough at the time of this
9 man's sentencing. At that time, your Honor sentenced
10 him to four years.
11 So, the underlying complaint here, your Honor,
12 I just wish to address myself briefly to that. The
13 charges against this man's mother were dismissed.
14 They are reflected in the Court's docket sheet in this
15 case. I was present at the time of sentencing, at the
16 time of the plea and Mr. LaRossa was present at the
17 time of the plea. If anything fell irregular and the
18 man's mother were to plead guilty to a charge which
19 she was not even made, because the count of the
20 indictment did not even name her at that point. I am
21 sure, Mr. LaRossa or yourself or myself would have
22 caught it. Quite obviously, the Court Reporter made
23 a mistake because of the three preceding comments on
24 those pages, which typing it out, the name D'Allesandr
25 he had put a Mrs. when he made up the transcript. But

as to the plea itself, the exact plea, the Court had read Count 2 of the indictment to the defendant. It only names himself, Gary Manfre and James Torturo, and the Court asked how do you plead? Mrs. D'Alessandro was not even named in there in that count, your Honor.

Obviously, on the face of that incident it is the reporter's error. The Court Clerk recorded the plea, I recorded the plea in my records at that time, obviously the plea was entered by this defendant. The agreements between defense counsel and myself, defendant would enter a guilty plea to this count and that appears prior to that in the record. And I think there is no basis in truth for this contention by the defendant.

MR. LA ROSSA: May I respond to it?

THE COURT: Excuse me. The Clerk is here. What does the Clerk's records show?

THE CLERK: Clerk's minutes show Defendant D'Alessandro, James on that day pleaded guilty and was advised of his rights by the Court.

THE COURT: What is the practice of keeping such minutes?

THE CLERK: The practice is, when defendant pleads guilty or not guilty, it is written in the

7 1 Clerk's minutes.

2 THE COURT: Based on the normal practice, would
3 you conclude therefore that the defendant did plead
4 guilty; that is, Mr. D'Allesandro?

5 MR. D'ALLESANDRO: Yes.

6 THE COURT CLERK: According to my practice,
7 pleaded guilty.

8 MR. LA ROSSA: May I make a few comments?

9 THE COURT: Yes.

10 MR. LA ROSSA: To Mr. Behar's statement.
11 Judge, your Honor will recognize at the time that
12 this occurred, Mr. D'Allesandro was addicted to
13 heroin.

14 THE COURT: That is so.

15 MR. LA ROSSA: And so you will recall that
16 when I said to you and I'm not trying to sound like a
17 prophet here, but on page 15 I said that: "This
18 man's going to do every day of his term except for
19 the maximum time off that the parole board has to
20 give."

21 THE COURT: Yes. I took that into account.

22

23 (continued next page)

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25

1 MR. LA ROSSA: But your Honor, I don't know
2 if that's true. I don't know if that's true. I then
3 said, "A study ought to be made of it. I think this
4 man is heading for a maximum term, every day that he
5 does. I think that should be taken into consideration."
6 Then, you responded, may it please the Court; that you
7 wrote of a silly 4208 (a) had no relevance here.
8 Now, we know whether you do it sitting in a
9 judicial chair, has no relationship on what the Board
10 of Prisons is going to do. Notwithstanding, how you
11 look at that probation report and determine what this
12 young man's rehabilitation promise is. They just
13 ignore the thing and we knew it for years and we, we
14 heard it, you heard it and I heard it from our own
15 ears, from Norman Carlson and some other people up in
16 Pennsylvania.
17 I think this is what we have to adjust ourselves
18 to. The young man like this, he's not addicted. He
19 looks pretty healthy and he's apparently kicked this
20 problem. He has no problem any more. His family
21 condition as it exists right now, pretty different
22 than it was at the time of the sentence.
23 THE COURT: In what respect?
24 MR. LA ROSSA: His father, completely disabled
25 man right now, been certified by who -- social

1 security. He has emphysema, no means of support. Man
2 was a house painter.
3 I think something should be done with respect
4 to the relief for him because statistical evaluation
5 of the Bureau of Prisons, frankly shouldn't apply to
6 an inmate. It's the same as giving him a number.
7 Nothing more than that; not treating him as an
8 individual.
9 Mr. D'Allesandro tells me the guidelines that
10 were proposed one time, sixteen to twenty months, he's
11 passed the -- almost twenty-four months.
12 THE COURT: I have a letter from Richard H.
13 Halbrain and Dennis E. Curtis, at the Yale Project.
14 MR. BEHAR: Your Honor, if I may, as to the
15 question of whether, what I think this is. Coming to
16 which is a motion under 2255.
17 THE COURT: No, sir, under 2255 doesn't --
18 MR. BEHAR: I was about to say, your Honor, I
19 think proper jurisdiction. This is the District Court
20 in Hartford. As to a motion to resentence, Mr. LaRossa
21 made a motion for reduction of sentence following this
22 Court's sentence within the 120 day time period
23 provided by the statute. And that motion was denied.
24 MR. LA ROSSA: That's true, your Honor. But
25 your Honor, there are other places in this Circuit

1 who are so upset over this that what they're doing
2 is resentencing under 4208 (a) two years after their
3 sentence. When they found out what happened, giving
4 an absolute direction to the parole board they take
5 the matter immediately and determine why the man
6 shouldn't be paroled.
7 THE COURT: No. No authority to do that in
8 4208 (a) (2n), is not the sentence here. The reason
9 he got four years was because I recognized as you
10 pointed out in 4208 (a) no use to offer this defendant
11 in view, however, of the serious question about the
12 validity of the plea and the confusion which may have
13 been engendered in the mind of the defendant, and the
14 mind of his mother, the defendant is to have his plea
15 set aside and the Court will entertain an application
16 now, if he wishes to consider repleading.
17 MR. LA ROSSA: May it please this Court, the
18 defendant does have an application. Defendant
19 Lawrence D'Allesandro, moves to withdraw the plea of
20 not guilty and enter a plea of guilty to Count Two of
21 the indictment.
22 MR. BEHAR: Your Honor, if we could have this
23 plea recorded.
24 THE COURT: It's being recorded.
25 MR. BEHAR: I meant by tape recorder as we

1 customarily do in such situations.

2 THE COURT: Charge; "On or about the 16th

3 day of February, 1972, within the Eastern District

4 of New York, the defendant Lawrence D'Allesandro,

5 Junior, did knowingly and intentionally distribute

6 approximately one ounce of heroin, Schedule I

7 narcotic drug controlled substance."

8 Mr. Lawrence D'Allesandro, Junior, how do you

9 plead to that count, guilty or not guilty?

10 THE DEFENDANT: Guilty, your Honor.

11 THE COURT: Anybody made any threats or

12 promises to you to induce you to plead guilty?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: Are you doing it voluntarily?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Are you aware that you may be

17 sentenced to fifteen years or twenty-five thousand

18 dollar fine or both and a respective parole term of

19 not less than three years?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Have you read the transcript of the

22 prior inquiries that I made to you on the prior plea?

23 THE DEFENDANT: I don't -- yes, your Honor, yes.

24 THE COURT: Well, it has been stipulated by

25 defendant and his counsel the answer would have been

1 the same if those questions were repeated.

2 MR. LA ROSSA: Yes, sir.

3 THE COURT: Any questions you want me to ask

4 at this time on behalf of the defendant?

5 MR. LA ROSSA: No, sir.

6 THE COURT: Does the defendant have any

7 questions?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Does the Government have anything

10 it wishes to pose as a question?

11 MR. BEHAR: Not at this time, your Honor.

12 THE COURT: Is there any updating of the

13 probation report that is required in light of the

14 letter of November 6th, 1974 from the Yale Law School,

15 Jerome M. Frank, Legal Service at the other service;

16 furnished earlier this morning.

17 MR. LA ROSSA: No, sir.

18 THE COURT: Are you prepared to be sentenced

19 at this time?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you waive further probation

22 report at this time?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you wish to say anything on

25 the sentence?

1 MR. LA ROSSA: I would ask your Honor to take
2 into account all of the statements that I just made.
3 I know your Honor has read the sentencing minutes of
4 the past.
5 THE COURT: Do you want to add anything, Mr.
6 Lawrence D'Allesandro, Junior?
7 THE DEFENDANT: Just the part that Mr. LaRossa
8 stated about my father being sick since then, hasn't
9 been able to work. I'm the only one they have left.
10 THE COURT: I sentence you to four years to
11 serve six months with credit for time served,
12 remaining three years and six months to be on proba-
13 tion with a special three-year parole term. On
14 motion of the United States Assistant Attorney,
15 Counts One, Three and Four and Five are dismissed.
16 MR. BEHAR: Your Honor, at this time I'd like
17 the record to show I have not entered that motion.
18 THE COURT: Well --
19 MR. LA ROSSA: May it please the Court, I move
20 to dismiss those open counts.
21 THE COURT: Granted. You'll be on probation
22 for an additional three and a half years from today,
23 do you understand that?
24 THE DEFENDANT: Not quite, your Honor. Then,
25 I have in other words, six years, three years special

1 parole and three years probation.

2 THE COURT: Three years and six months

3 probation and three years special parole thereafter.

4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Are there any objections to the

7 legality of that sentence?

8 MR. LA ROSSA: No, sir.

9 MR. BEHAR: Your Honor, the Government would

10 request two things of the Court --

11 THE COURT: I'm not finished with the sentence

12 yet. One of the conditions of the sentence is that

13 you not take any drugs of any kind except on

14 prescription for medical problems. Another condition

15 is that you get a job as soon as possible. You will

16 remain under close probation supervision. Should you

17 fail, you will go back in jail six years and six

18 months, is that clear?

19 THE DEFENDANT: Can I talk to my lawyer for one

20 second?

21 THE COURT: Yes.

22 THE DEFENDANT: Yes, your Honor. I just didn't

23 understand too well. I understand.

24 MR. LA ROSSA: He didn't understand the six

25 months provisional.

1 THE COURT: You're getting credit for time
2 served. It's a split sentence under Section 3151 of
3 the United States Code.
4 MR. BEHAR: Your Honor, I would ask two things;
5 one, a writ, if we could have a written opinion of
6 the Court in this matter dated the day the order is
7 prepared and --
8 THE COURT: Well, I'm not going to grant a
9 written opinion now. We have an oral statement. There
10 is a serious question about what happened on the day
11 of sentencing. Nobody has a direct recollection. The
12 only record we have of the reporter indicates that
13 there was a confusion.
14 Clerk's minutes do indicate no confusion, but
15 there is a serious doubt and I think in view of the
16 serious doubt justice requires motion be granted. And
17 I find as a matter of fact that the sentence was
18 invalid because the plea was not properly taken. A
19 written one, the practice now, is to put those things
20 on tape.
21 MR. BEHAR: The second request, your Honor,
22 would be continuance of the defendant's incarceration
23 just for a period of fifteen days.
24 THE COURT: You want me to stay the orders so
25 that you can decide whether to appeal?

1 MR. BEHAR: Yes, your Honor.

2 MR. LA ROSSA: I ask your Honor not to do that.
3 Your Honor sentenced the man time served. He served
4 two years. He's never been a bail risk.

5 THE COURT: You're going to college. When is
6 the term finished?

7 THE DEFENDANT: Next week in the finals, your
8 Honor.

9 THE COURT: Next week you take the finals?
10 All right. When do you finish your finals?

11 THE DEFENDANT: Next week I practically finish
12 the course. I spoke to the teacher before and I can
13 correspond through the mail, your Honor.

14 THE COURT: When do they give the finals, what
15 day?

16 THE DEFENDANT: Next Tuesday, your Honor.

17 THE COURT: Next Tuesday, the 19th?

18 THE DEFENDANT: Yes. I think it's Tuesday.

19 THE COURT: The orders are stayed until
20 November 20. You will be released November 20 unless
21 the Court of Appeals should rule otherwise.

22 Good luck. If I see you again you're going to
23 jail for a long time.

24 THE DEFENDANT: Thank you very much, your
25 Honor.

MR. BEHAR: Thank you, your Honor.

* * * * * *

LETTER OF UNITED STATES OF AMERICA OF DECEMBER 11, 1974 AND ATTACHED AFFIDAVIT OF MICHAEL MIELE OFFICIAL COURT REPORTER

ERK:SMB:ec
F. #740,971

December 11, 1974

Honorable Jack B. Weinstein
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Lawrence D'Allesandro, Jr. - 72 CR 970

Dear Judge Weinstein:

In reference to the hearing held in this case on November 12, 1974, I am sure Your Honor will recall that the official court reporter who was present at the time of Mr. D'Allesandor's plea, Mr. Michael Miele, was not called upon to testify because we did not anticipate that the motion to set aside the plea had any merit or that it would be granted. Mr. Miele's recollection of the events in question were represented to the district court by myself in both a letter dated October 8, 1974, and at the time of the hearing. Therefore, in order to complete the record in this case, we are filing the attached affidavit by Mr. Miele, which substantially restates the substance of what previously was related to the district court.

Very truly yours,

DAVID G. TRAGER
United States Attorney

By:

Stephen M. Behar
Assistant U.S. Attorney

cc: James LaRossa, Esq.
522 Fifth Avenue
New York, N. Y.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - -X

LAWRENCE D'ALLESANDRO,

Petitioner

AFFIDAVIT

-against-

UNITED STATES OF AMERICA,

Respondent

- - - - - - - - - - - - - - - - -X

STATE OF NEW YORK)
) SS:
COUNTY OF KINGS)

MICHAEL MIELE, being duly sworn, deposes and says:

1. I am an official court reporter for the Eastern District of New York and I replaced Mr. Emanuel Carr as official court reporter before Judge Weinstein on October 30, 1972 in the matter of United States of America v. Lawrence D'Allesandro, Jr., James Torturo and Lucy D'Allesandro, Docket No. 72 CR 970.

2. I was present in the district court (before Weinstein, J.) when Mr. James LaRossa announced that his client Mr. Lawrence D'Allesandro wished to withdraw his plea of not guilty and offer a plea to the second count of Indictment #72 CR 970.

3. I have reviewed the transcript of Mr. D'Allesandro's guilty plea on that date and I have reviewed my original stenographic notes of that plea. Unlike the transcript (p.26, lines 19-20) my original stenographic notes do not reflect that "Mrs." D'Allesandro answered Judge Weinstein's inquiry to the defendant

("how do you plead, guilty or not guilty"). The inclusion of the word "Mrs" before D'Allesandro at that point in the transcript was probably the result of an error by the typist apparently caused by the fact that Mrs. D'Allesandro had been referred to as answering the previous question posed by Judge Weinstein.

4. That I reported these facts to Assistant U.S. Attorney Stephen M. Behar prior to October 8, 1974.

MICHAEL MIELE
Official Court Reporter

Sworn to before me
this 11th day of December, 1974

Notary Public, State of New York
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1976

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS } ss
EASTERN DISTRICT OF NEW YORK

LYDIA FERNANDEZ being duly sworn, deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 7th day of February 19 75 he served ~~a copy~~ two copies of the within Joint Appendix by placing the same in a properly postpaid franked envelope addressed to:

LaRossa, Shargel & Fischetti, Esqs.
522 Fifth Avenue
New York, N. Y. 10036

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, Washington Street, Borough of Brooklyn, County of Kings, City of New York.

Lydia Fernandez
LYDIA FERNANDEZ

Sworn to before me this
7th day of February 19 75

Olga S. Morgan
OLGA S. MORGAN
Notary Public, State of New York
No. 24-4701966
Qualified in Kings County
Commission Expires March 30, 1977